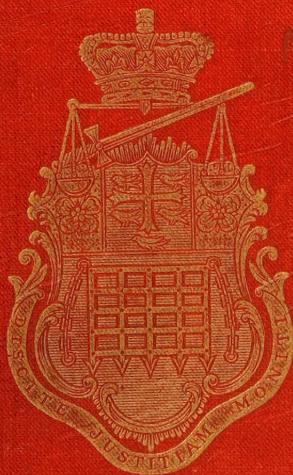


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A COMPENDIUM OF THE LAW AND PRACTICE
RELATING TO MATTERS OCCUPYING THE ATTENTION
OF COURTS OF SUMMARY JURISDICTION,
PENALTIES ON SUMMARY CONVICTIONS, MAGISTRATES'
CALENDAR, ETC.



With an Appendix

OF

STATUTES, RULES, AND FORMS.

BY

CHARLES MILNER ATKINSON,

M.A. & LL.M. CANTAB., OF THE INNER TEMPLE,
STIPENDIARY MAGISTRATE FOR THE CITY OF LEEDS.

LONDON:
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PREFACE TO THE SEVENTH EDITION.



ALTHOUGH a new edition of this work is required after the lapse of a bare twelvemonth from the issue of the last edition, the published reports have, in the meantime, contained a hundred or more decisions of the High Court directly affecting magisterial benches. Many of these decisions are of undoubted interest and importance, alike to the justice of the peace and to the practitioner while some of them have a marked bearing on the daily routine of the courts (see, *e.g.*, *R. v. Thompson*, pp. 59, 63; *R. v. Beesly*, pp. 65, 66; *R. v. Rawson*, p. 75; and *Ex parte Bottomley*, p. 130).

The present session has borne but little legislative fruit; yet it has been found necessary to incorporate or refer to some seven or eight statutes, considerable importance attaching to four, at least, of them, *i.e.*, the Cinematograph Act, the Oaths Act, the Trade Boards Act, and the Housing, Town Planning, &c., Act.

The titles POST OFFICE and LANDLORD AND TENANT have been modified and augmented by the operation of the Post Office Act, 1908, and the Law of Distress Amendment Act, 1908, statutes which came into force during the course of last summer; and some sections of the Children Act have been treated more adequately than was possible in the sixth edition.

Substantial additions and extensions have, too, been introduced into the text ; while effect has been given, in the Appendix, to the Rules and Orders in Council issued under the Children Act and the Cinematograph Act. The illustrative forms of Information and Summons have, moreover, been largely augmented in number, and it is hoped that the work, in its amplified form, may prove increasingly useful to the practitioner. Some of the extensions are based on the suggestions of correspondents, to whom the author takes this opportunity of tendering his thanks.

As in former editions, it has been the aim of the writer, so far as the subject-matter would allow, to retain the form of a coherent treatise, and thus render the book more convenient for use by those who are not professional lawyers. Mr. Frank Richards, of Leeds, has again afforded valuable assistance in revision.

C. M. A.

LEEDS, *January*, 1910.

PREFACE TO THE FIRST EDITION.

THE main object of this book is to enable those engaged in the administration of magisterial law to ascertain, with readiness, the extent of the powers conferred, and the nature of the duties imposed, upon magistrates and courts of summary jurisdiction. There are a few subjects (notably the Factory Acts and the Merchant Shipping Act) which, by reason of their complexity, could not be adequately considered within the limits of the present work. For these subjects reference must be made to separate treatises or to works of a much wider scope. It is hoped, however, that, with these exceptions, such matters as ordinarily occupy the attention of justices are dealt with in sufficient detail to afford the necessary information to magistrates and legal practitioners. The Appendix contains the Indictable Offences Act, 1848, and the various Summary Jurisdiction Acts, together with the Rules and Forms thereunder; and there are also set forth a few other statutes bearing upon the subject-matter of the work with the Rules and Forms under the Employers and Workmen Act, 1875. The numerical references in the margin of the text relate to the pages in the Appendix containing the particular section of the statute or the particular form connected with the subject-matter of the text.

The publishers have placed at the author's disposal "Stone's Practice" (9th edition, by Macnamara) and "Wigram's Justices' Note-Book" (6th edition, by Bodkin), and occasional extracts from these books have accordingly been made without acknowledgment.

The author desires to express his indebtedness to his friend Mr. Stephen H. West, of the North-Eastern Circuit, for kind assistance in the preparation of this work for the press, and to his friend Mr. Wyatt Paine, of the Inner Temple, for assistance in revision.

The statutes of the last session of Parliament and the most recent decisions of the Courts have been noted in the body of the work. The dates of the various decisions cited may be ascertained by reference to the List of Cases.

C. M. A.

LEEDS, *October*, 1895.

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PENALTIES ON SUMMARY CONVICTIONS.

PENALTIES are recoverable by distress and, in default, imprisonment without hard labour, unless "no dist." and "h. l." is added.

When the amount adjudged to be paid

Does not exceed 10s.

Exceeds 10s. but does not exceed £1

Exceeds £1. but does not exceed £5

Exceeds £5. but does not exceed £20

Exceeds £20

Imprisonment not to exceed

7 days.

14 days.

1 cal. month.

2 cal. months.

3 cal. months.

As to mitigation of penalty, discharge without punishment, &c., see *post*, pp. 105 *et seq.*

Offence, and page in text.	Statute.	Maximum imprisonment without option of fine.	Maximum fine, forfeiture, &c.
ADULTERATION OF FOOD AND DRUGS.	38 & 39 Vict. c. 63		
Offences as to mixing, colouring, &c., an article of food, or a drug, 221	ss. 3, 4, 5	...	£50
Selling food or drugs not of nature, &c. demanded, 222	s. 6	...	£20
Selling compounded article not composed of ingredients as demanded, 232	s. 7	...	£20
Abstracting part of an article of food, or selling article after abstraction, 232	s. 9	...	£20
Frauds as to certificates, warranties, or labels, 233	s. 27	...	£20
Refusing to sell sample to public officer, 234	s. 17	...	£10
Refusing to supply sample of article in course of delivery, 235, 237	42 & 43 Vict. c. 30, s. 4	...	£10
Obstructing or bribing inspector or officer in course of his duties, 238	62 & 63 Vict. c. 51, s. 14	...	£20
Selling milk or cream in public place without name, &c., on vehicle or receptacle, 237	62 & 63 Vict. c. 51, s. 16	...	£20
Selling condensed separated or skimmed milk without label, <i>ib.</i>	s. 9	...	£2
Offences as to importation of agricultural and other produce insufficiently marked, 238	s. 11	...	£10
	s. 1	...	£20
	7 Edw. 7, c. 21, s. 5.		

PENALTIES are recoverable by **distress** and, in default, imprisonment without hard labour, unless "**no dist.**" and "**h. l.**" is added.

When the amount adjudged to be paid

Does not exceed 10s.

Exceeds 10s., but does not exceed £1

Exceeds £1, but does not exceed £5

Exceeds £5, but does not exceed £20

Exceeds £20

Imprisonment not to exceed

7 days.

14 days.

1 cal. month.

2 cal. months.

3 cal. months.

As to mitigation of penalty, discharge without punishment, &c., see *post*, pp. 165 *et seq.*

Offence, and page in text.	Statute.	Maximum imprisonment without option of fine.	Maximum fine, forfeiture, &c.
ADULTERATION OF SEEDS ACT, 1869.	32 & 33 Vict. c. 112, s. 3		
Offences against Act, 241.		...	£5
AGRICULTURAL GANGS.	30 & 31 Vict. c. 130		
Gangmaster or occupier of land contravening Act, 244	s. 4	...	£1 for each person employed
Acting as gangmaster without licence, <i>ib.</i>	s. 5	...	£1 per day.
Gangmaster violating conditions of licence, <i>ib.</i>	s. 7	...	10s.
AIDERS AND ABETTORS, 149	11 & 12 Vict. c. 43, s. 5	Liab. as though principal	Liab. as though principal.
ALIENS ACT, 1905.	5 Edw. 7, c. 13		
Offences under the Act, 245		...	£100 (if master of ship); if alien, punished as a "rogue and vagabond."
ANIMALS, CRUELTY TO.	12 & 13 Vict. c. 92		
Cruelly beating, ill-treating, &c., animal, 247	ss. 2, 18	3 mos.(h.l.)	£5 No dist. (h.l.).
Keeping places for bull baiting, &c., 251	ss. 3, 18	3 mos.(h.l.)	£5 per day. No dist. (h.l.).
Cruelty in conveyance of animals, 252	ss. 12, 18	3 mos.(h.l.)	£3 No dist. (h.l.).
Cruelty to wild animals in captivity, 254	63 & 64 Vict. c. 33, ss. 2, 3	3 mos.(h.l.)	£5 No dist. (h.l.).
Maliciously killing, maiming, &c., animals not cattle, 255	24 & 25 Vict. c. 97, s. 41	6 mos.(h.l.)	£20 beyond amount of injury. No dist. (h.l.).
Performing painful experiment except under conditions of Vivisection Act, or exhibiting such experiments, 256	39 & 40 Vict. c. 77, ss. 2, 6	...	£50

* As to option of trial by jury, see *post*, p. 63.

Offence, and page in text.	Statute.	Maximum imprisonment without option of fine.	Maximum fine, forfeiture, &c.
ANIMALS, CRUELTY			
<i>TO—continued.</i>			
Advertising such exhibition, 257	39 & 40 Vict. c. 77, s. 6	...	£1
Administering poisonous drugs to domestic animal, 258	39 Vict. c. 13, s. 1	1 mo. (h.l.)	£5
ANIMALS, DISEASES OF.			
General offences under Diseases of Animals Act, 1894, 261	57 & 58 Vict. c. 57, s. 52	...	£20 and further penalties where offence relates to carcasses, &c.
Offences as to licences, certificates, &c., 263	s. 53	2 mos. (h.l.)	£20
APPRENTICES.			
Disobedience of order directing apprentice to perform contract, 267	38 & 39 Vict. c. 90, s. 6	14 days	...
*Master neglecting to provide apprentice with food, 269	38 & 39 Vict. c. 86, ss. 6, 10	6 mos. (h.l.)	£20
Master abandoning parish apprentice, <i>ib.</i>	56 Geo. 3, c. 139, s. 8	...	£10
ASSAULT.			
Common assault, 280	24 & 25 Vict. c. 100, s. 42	2 mos. (h.l.)	£5 (inclusive of costs) No dist. (h. l.).
Aggravated assault on female or boy under 14. 283	s. 43	6 mos. (h.l.)	£20 (inclusive of costs). No dist.
Assault on constable, 285	34 & 35 Vict. c. 112, s. 12	6 mos. (h.l.)	£20 No dist. (h.l.).
Assault on officer or bailiff of county court, 287, 404	51 & 52 Vict. c. 43, s. 48	...	£5
BETTING.			
*Keeping or using a place for betting purposes, 310	16 & 17 Vict. c. 119, ss. 1, 3	6 mos. (h.l.)	£100 (h.l.).
Owner, &c., of betting house receiving deposits, 315	s. 4	3 mos. (h.l.)	£50 (h.l.).
Advertising place as open for betting purposes, 316	s. 7	2 mos. (h.l.)	£30 (h.l.). <i>Quære</i> , whether imprisonment in default can exceed 2 months.

* As to option of trial by jury, see *post*, p. 63.

PENALTIES are recoverable by distress and, in default, imprisonment without hard labour, unless "no dist." and "h. l." is added.

When the amount adjudged to be paid

Does not exceed 10s.

Exceeds 10s. but does not exceed £1

Exceeds £1, but does not exceed £5

Exceeds £5, but does not exceed £20

Exceeds £20

Imprisonment not to exceed

7 days.

14 days.

1 cal. month.

2 cal. months.

3 cal. months.

As to mitigation of penalty, discharge without punishment, &c., see *post*, pp. 105 *et seq.*

Offence, and page in text.	Statute.	Maximum imprisonment without option of fine.	Maximum fine, forfeiture, &c.
BETTING — <i>continued</i> .			
Publishing advertisements inviting betting, 323	37 Vict. c. 15, s. 3	2 mos. (h.l.)	£30 (h.l.). <i>Quære</i> , as above.
Inviting infants to bet, wager, or borrow money, 325	55 Vict. c. 4, ss. 1, 2, 3	1 mo. (h.l.)	£20 or both fine and imprisonment. <i>Quære</i> , whether imprisonment in default can exceed 1 month.
Betting in a street or public place, <i>ib.</i>	6 Edw. 7, c. 43, s. 1	...	£10
BICYCLES. And see Driving and Highway.			
Breach of special regulations under Local Government Act, 1888. 328	51 & 52 Vict. c. 41, s. 85	...	£2
BILLIARDS.			
Keeping public billiard table, bagatelle board, &c., without a licence, 331	8 & 9 Vict. c. 109, s. 11	1 mo. (h.l.)	£10 per day.
Not exhibiting words "licensed for billiards," <i>ib.</i>	<i>ib.</i>	1 mo. (h.l.)	£10 per day.
Licensed person opening during prohibited hours, or committing offence against tenor of licence, <i>ib.</i>	8 & 9 Vict. c. 109, ss. 10, 12, 14 35 & 36 Vict. c. 94, s. 17	...	£10
Licensed victualler allowing play during closing hours, or before 8 A.M., or on Sunday, Christmas Day, Good Friday, or public fast day, 332	8 & 9 Vict. c. 109, s. 13	1 mo. (h.l.)	£10
BIRDS PROTECTION ACTS.			
Committing offence in respect of birds included in the schedule, 332	43 & 44 Vict. c. 35, s. 3	...	£1 for each bird.

Offence, and page in text.	Statute.	Maximum imprisonment without option of fine.	Maximum fine, forfeiture, &c.
BIRDS PROTECTION ACTS — <i>continued</i> .			
Committing offence in respect of birds not included in the schedule, 333	43 & 44 Vict. c. 35, s. 3	...	Reprimand and payment of costs.
Refusal to give name and address, 334	s. 4	...	10s.
Setting certain traps likely to injure birds, <i>ib.</i>	4 Edw. 7, c. 4, s. 2	...	£2
Taking birds by means of a hook, &c., <i>ib.</i>	8 Edw. 7, c. 11, s. 1	...	£2
BRAWLING.			
In a church or chapel, 386	23 & 24 Vict. c. 32, s. 2	2 months	£5
BREAD.			
Selling otherwise than by weight, 337	6 & 7 Will. 4, c. 37, s. 4	...	£2 (h.l.).
Refusing to weigh bread, and other offences relating to scales and weights, 339	ss. 6, 7	...	£5 (h.l.).
Adulterating bread, 341	s. 8	...	£10 No dist. (h.l.).
Adulterating flour, <i>ib.</i>	s. 9	...	£20 (h.l.).
Omitting to mark certain kinds of bread with letter M, <i>ib.</i>	s. 10	...	10s. per lb. (h.l.).
BROTHELS.			
Keeping or managing a brothel, 345	48 & 49 Vict. c. 69, s. 13 (i)	3 mos. (h.l.)	£20 <i>Quære</i> , whether (h.l.). <i>Reg. v. Tyne-mouth</i> , post, p. 111
Tenant, &c., permitting premises to be used as a brothel, <i>ib.</i>	ib. (ii)	3 mos. (h.l.)	£20
Lessor wilfully letting premises to be used as a brothel, <i>ib.</i>	ib. (iii)	3 mos. (h.l.)	£20
Harbouring thieves in a brothel, 348	34 & 35 Vict. c. 112, s. 11	...	£10 and recognizances. No dist. (h.l.).
CANAL BOATS.			
Using unregistered canal boat as a dwelling, 358	40 & 41 Vict. c. 60, s. 1	...	£1 for each occasion.
Using as dwelling for more than prescribed number, <i>ib.</i>	ib.	...	£1 for each occasion.
Obstructing entry upon canal boat, 359	s. 5	...	£2

PENALTIES are recoverable by distress and, in default, imprisonment without hard labour, unless “no dist.” and or “h.l.” is added.

When the amount adjudged to be paid

Does not exceed 10s.

Exceeds 10s., but does not exceed £1

Exceeds £1, but does not exceed £5

Exceeds £5, but does not exceed £20

Exceeds £20

Imprisonment not to exceed

7 days.

14 days.

1 cal. month.

2 cal. months.

3 cal. months.

As to mitigation of penalty, discharge without punishment, &c., see *post*, pp. 105 *et seq.*

Offence, and page in text.	Statute.	Maximum imprisonment without option of fine.	Maximum fine, forfeiture, &c.
CATTLE STRAYING.			
Owner permitting cattle to stray on highway, 359	27 & 28 Vict. c. 101, s. 25	...	5s. for each animal (but not exceeding 30s.) together with the expenses.
Cattle at large in streets under Town Police Clauses Act, 361	10 & 11 Vict. c. 89, s. 24	...	£2 and expenses.
Rescuing cattle impounded damage feasant, <i>ib.</i>	6 & 7 Vict. c. 30, s. 1	...	£5 and expenses. No dist. (h.l.).
CHAFF-CUTTING MACHINES.			
Working in disregard of statutory requirements, 362	60 & 61 Vict. c. 60, s. 3	...	£5
CHILDREN.			
* (Cruelty to child under sixteen, 372	8 Edw. 7, c. 67, s. 12	6 mos. (h.l.)	£25 No dist. (h.l.) or both fine and imprisonment.
Offences relating to the employment of children as beggars, singers in the streets, performers for profit, &c., 375	4 Edw. 7, c. 15, s. 2 8 Edw. 7, c. 67, s. 14	3 mos. (h.l.)	£25 No dist. (h.l.) or both fine and imprisonment.
Causing children to take part in dangerous performances, 370	42 & 43 Vict. c. 34, s. 3; 60 & 61 Vict. c. 52, s. 1	...	£10
Employing juvenile in contravention of Act of 1903, 369	3 Edw. 7, c. 45	...	£2
Breaches of provisions as to safety of children at entertainments, 371	8 Edw. 7, c. 67, s. 121	...	£50
CHIMNEYS.			
On fire (Town Police Clauses Act), 775	10 & 11 Vict. c. 89, ss. 30, 31	...	£5 if wilful; 10s. if accidental.

* As to option of trial by jury, see *post*, p. 63.

Offence, and page in text.	Statute.	Maximum imprisonment without option of fine.	Maximum fine, forfeiture, &c.
CHIMNEY-SWEEPS.			
Carrying on business without certificate, or failing to give name and address, 384	38 & 39 Vict. c. 70, ss. 15, 16	...	10s.
*Allowing minors to sweep chimneys, 385.	3 & 4 Vict. c. 85, s. 2	6 mos.(h.l.)	£10 (h.l.).
	27 & 28 Vict. c. 37, s. 11		
Employment of young persons in business, <i>ib.</i>	27 & 28 Vict. c. 37, ss. 6, 7	...	£10 (h.l.).
Creating annoyance by ringing door bells, &c., whilst soliciting employment, 386	57 & 58 Vict. c. 51	...	10s.
CINEMATOGRAPHS.			
Breaches of regulations under Act of 1909 or of conditions of licence, 388, 1215	9 Edw. 7, c. 30, ss. 1, 3.	...	£20; and daily penalty of £5 for continuing offence.
COIN.			
Tendering coin defaced by stamping names or words thereon, 390	24 & 25 Vict. c. 99, s. 17	...	£2
Being in unlawful possession of more than 5 counterfeit foreign coins, 391	s. 23	...	£2 for each coin and forfeiture. No dist. (h.l.).
CONSTABLE. And see Assault.			
Resisting or obstructing in execution of duty, 285	48 & 49 Vict. c. 75, s. 2	...	£5 No dist. (h.l.).
Neglect of duty or disobedience by borough constable, 399	45 & 46 Vict. c. 50, s. 194	10 days	£2
Neglect of duty by county constable, <i>ib.</i>	2 & 3 Vict. c. 93, s. 12	1 mo. (h.l.)	£10
CONVICTS.			
*Ticket-of-leave man or person under police supervision omitting to report himself or notify change of residence, 400	34 & 35 Vict. c. 112, ss. 5, 8	1 year (h.l.)	or forfeiture of the licence.
	54 & 55 Vict. c. 69, s. 4		
*Offences by persons who have been twice convicted of "crime," <i>ib.</i>	34 & 35 Vict. c. 112, s. 7	1 year (h.l.)	...
	54 & 55 Vict. c. 69, s. 6		

* As to option of trial by jury, see *post*, p. 63.

PENALTIES are recoverable by **distress** and, in default, imprisonment **without** hard labour, unless "**no dist.**" and ^{or} "**h. l.**" is added.

When the amount adjudged to be paid

Does not exceed 10s.

Exceeds 10s., but does not exceed £1

Exceeds £1, but does not exceed £5

Exceeds £5, but does not exceed £20

Exceeds £20

Imprisonment not to exceed

7 days.

14 days.

1 cal. month.

2 cal. months.

3 cal. months.

As to **mitigation** of penalty, discharge **without punishment**, &c., see *post*, pp. 105 *et seq.*

Offence, and page in text.	Statute.	Maximum imprisonment without option of fine.	Maximum fine, forfeiture, &c.
CONVICTS -- <i>continued</i> .			
Ticket-of-leave man getting livelihood by dishonest means, 401	34 & 35 Vict. c. 112, s. 3	...	Forfeiture of licence.
Breach of conditions of ticket-of-leave, 402	34 & 35 Vict. c. 112, s. 4	3 mos.(h.l.)	£25
COPYRIGHT.			
Importing books reprinted without the British dominions, 403	5 & 6 Vict. c. 45, ss. 2, 17	...	£10 with double value of copies.
Copying or imitating a work of art, <i>ib.</i>	25 & 26 Vict. c. 68, s. 6.		£10 and forfeiture.
Frauds as to the signature of works of art, or uttering spurious works, 404	<i>ib.</i> s. 7.		£10, or double price at which copies are sold or offered: and forfeiture.
CORRUPTION, PREVENTION OF.			
*Offences against Act of 1906, 343	6 Edw. 7, c. 34, s. 1	4 mos.(h.l.)	£50; or both fine and imprisonment.
COUNTY COURT. And see Assault.			
Rescuing goods levied under process of county court, 404	51 & 52 Vict. c. 43, s. 48	...	£5
DEALERS IN OLD METALS. See Old Metals.			
DESERTERS.			
Reservist deserting or absent without leave, 407	45 & 46 Vict. c. 48, s. 15	...	£25, and not less than £2. No dist. (h. l.). Imprisonment in default not less than 7 days.

* As to option of **trial by jury**, see *post*, p. 63.

Offence, and page in text.	Statute.	Maximum imprisonment without option of fine.	Maximum fine, forfeiture, &c.
DESERTERS — <i>continued</i> .			
Pretending to be a deserter or absentee without leave from the regular forces or Army Reserve, 407	44 & 45 Vict. c. 58, s. 152; 45 & 46 Vict. c. 48, s. 16	3 mos. (h.l.)	...
*Procuring or assisting a soldier, reservist, or "territorial" to desert, <i>ib.</i>	44 & 45 Vict. c. 58, s. 153; 45 & 46 Vict. c. 48, s. 17; 7 Edw. 7, c. 9, s. 20	6 mos. (h.l.)	...
Procuring or assisting a reservist to be absent without leave, 408	45 & 46 Vict. c. 48, s. 17	...	£20
DOGS.			
*Stealing dogs, 410	24 & 25 Vict. c. 96, s. 18	6 mos. (h.l.)	£20, and value of dog. No dist. (h.l.).
Disobeying order to keep under control or destroy a dangerous dog, 413	34 & 35 Vict. c. 56, s. 2	...	£1 per day.
Suffering ferocious dog to be at large (Town Police Clauses Act), 414	10 & 11 Vict. c. 89, s. 28	14 days	£2 <i>Quære</i> whether imprisonment in default can exceed 14 days.
Suffering dog suspected of madness to be at large (Town Police Clauses Act), 415	<i>ib.</i>	14 days	£2 <i>Quære</i> whether imprisonment in default can exceed 14 days.
Disobeying justices' order placing restrictions on dogs in districts where rabies is suspected, <i>ib.</i>	34 & 35 Vict. c. 56, s. 3	...	£1
Keeping without licence or refusing to produce licence, 418	30 Vict. c. 5, ss. 8, 9	...	£5
Breach of regulations as to wearing collars (Dogs' Order, 1906). See Animals, Diseases of (<i>General Offences</i>), <i>ante</i> , p. lix.			
DRIVING AND RIDING.			
Using cart without owner's name painted thereon, 419	5 & 6 Will. 4, c. 50, s. 76	...	£2 (h.l.).

* As to option of trial by jury, see *post*, p. 63.

PENALTIES are recoverable by **distress** and, in default, imprisonment **without** hard labour, unless "**no dist.**" or "**h.l.**" is added.

When the amount adjudged to be paid

Does not exceed 10s.

Exceeds 10s., but does not exceed £1

Exceeds £1, but does not exceed £5

Exceeds £5, but does not exceed £20

Exceeds £20

Imprisonment not to exceed

7 days.

14 days.

1 cal. month.

2 cal. months.

3 cal. months.

As to mitigation of penalty, discharge **without punishment**, &c., see *post*, pp. 105 *et seq.*

Offence, and page in text.	Statute.	Maximum imprisonment without option of fine.	Maximum fine, forfeiture, &c.
DRIVING AND RIDING— <i>continued.</i>			
One driver for two carts not properly attached, 419	5 & 6 Will. 4, c. 50, s. 77	...	£1 (h.l.).
Riding on waggon without reins, and numerous other offences, <i>e.g.</i> , furious riding or driving, 420	ib. s. 78	...	£10, if owner of vehicle; otherwise £5 No dist. (h.l.). <i>Quære</i> whether imprisonment in default can exceed 6 weeks.
Riding on footpath by roadside, 421	ib. s. 72	...	£2 and damage (h.l.).
Various offences as to, in streets (Town Police Clauses Act), 422	10 & 11 Vict. c. 89, s. 28	14 days	£2 <i>Quære</i> whether imprisonment in default can exceed 14 days.
Offences against Lights on Vehicles Act, 1907, 423	7 Edw. 7, c. 45, ss. 1, 2	...	£2
DRUGGING. See Animals (Cruelty to).			
DRUNKENNESS.			
Found drunk in highway, public place, or on licensed premises, 605	35 & 36 Vict. c. 94, s. 12	...	10s. (h.l.) and sureties.
Drunk and disorderly in highway or public place, 606	ib.	1 mo. (h.l.) & sureties	£2 (h.l.) and sureties.
Drunk in charge of a carriage, horse, cattle or steam-engine, in highway or public place, 607	ib.	1 mo. (h.l.) & sureties	£2 (h.l.) and sureties.
Drunk in possession of loaded firearms, <i>ib.</i>	ib.	1 mo. (h.l.) & sureties	£2 (h.l.) and sureties.
Drunk in charge of a child, <i>ib.</i>	2 Edw. 7, c. 28, s. 2	1 mo. (h.l.) & sureties	£2 and sureties.

Offence, and page in text.	Statute.	Maximum imprisonment without option of fine.	Maximum fine, forfeiture, &c.
DRUNKENNESS—<i>contd.</i>			
Drunk and riotous in street (Town Police Clauses Act), 774	10 & 11 Vict. c. 89, s. 29	7 days	£2 <i>Quare</i> whether imprisonment in default can exceed 7 days.
As to Inebriates Acts, 1898, 1899 , see p. 608			
EDUCATION.			
Non-compliance with attendance order, 428	39 & 40 Vict. c. 79, s. 12; 63 & 64 Vict. c. 53, s. 6	...	20s. (inclusive of costs).
Breach of bye-laws as to attendance, &c., 430	33 & 34 Vict. c. 75, s. 74	...	Not exceeding 20s. (inclusive of costs).
Employing children in contravention of 39 & 40 Vict. c. 79, 432	39 & 40 Vict. c. 79, ss. 5, 6, 24, 28	...	£2
Forging certificate under Acts, 435	36 & 37 Vict. c. 86, s. 25	3 mos. (h.l.)	£25
Parent neglecting to cause child employed in factory to attend school, 435	1 Edw. 7, c. 22, ss. 68, 71, 72, 138	...	£1
Occupier of factory employing child without obtaining attendance certificate, 436	ss. 69, 137	...	£3; or, if employment in night-time, £5. [In domestic workshops, &c., £1 (or if in night-time, £2).]
FACTORIES & WORKSHOPS. And see Education, <i>supra</i>.			
N.B.—The penalty for a second offence within two years relating to a factory , in case (a), (b), (c) or (g), must not be less than £1.			
(a) Occupier not keeping the place in conformity with the Acts; <i>e.g.</i> , as to sanitary condition or conveniences, limewashing, overcrowding, the fencing of machinery, modes of escape from fire, temperature, &c., 458	1 Edw. 7, c. 22, ss. 1, 3, 7, 8, 9, 10, 11, 12, 14, 16, 60, 74, 75, 76, 99, 135; 7 Edw. 7, c. 39, s. 3	...	£10; and in case of non-compliance with an order to conform, £1 per day.

PENALTIES are recoverable by **distress** and, in default, imprisonment **without** hard labour, unless "**no dist.**" and "**h.l.**" is added.

When the amount adjudged to be paid

Does not exceed 10s.

Exceeds 10s., but does not exceed £1

Exceeds £1, but does not exceed £5

Exceeds £5, but does not exceed £20

Exceeds £20

Imprisonment not to exceed

7 days.

14 days.

1 cal. month.

2 cal. months.

3 cal. months.

As to **mitigation** of penalty, discharge **without punishment**. &c., see *post*, pp. 105 *et seq.*

Offence, and page in text.	Statute.	Maximum imprisonment without option of fine.	Maximum fine, forfeiture, &c.
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FACTORIES & WORKSHOPS—continued.

(b) Occupier employing child, young person, or woman contrary to the provisions of the Acts: <i>e.g.</i> , as to the periods or places of employment, cleaning machinery in motion, taking meals in certain places, employing without certificate of fitness, &c., 460	1 Edw. 7, c. 22, ss. 12, 13. 24—31, 33—35, 37—39, 44, 49, 50, 54, 56, 61—63, 77, 78, 137; 7 Edw. 7, c. 39, s. 3.	...	£3 (or, if the employment was in the night-time, £5) for each child, young person, or woman. [In domestic factory or workshop, £1 (or if in night-time, £2).]
(c) Any person obstructing inspector by wilfully delaying him, failing to comply with his requisitions, failing to produce certificates, &c., or concealing a child, young person, or woman, 463	1 Edw. 7, c. 22, s. 119	...	If obstruction was in a factory or workshop, the occupier is liable to a fine of £5 (or, if in the night-time, £20). [In domestic factory or workshop, £1 (or if in night-time, £5).]
(d) Occupier contravening order of Court prohibiting use of unhealthy or dangerous place, 459	ib. s. 18	...	£2 per day.
(e) Person entitled to control use of dangerous machine or plant contravening order of Court prohibiting its use, 460	s. 17	...	£2 per day.
(f) Occupier of factory, &c., or any place from which work is given out, or contractor, allowing wearing apparel to be made, &c., in building where there is scarlet fever or small-pox, 461	s. 109	...	£10

Offence, and page in text.	Statute.	Maximum imprisonment without option of fine.	Maximum fine, forfeiture, &c.
FACTORIES & WORKSHOPS — <i>continued</i> .			
(g) Penal compensation by occupier when injury or death results from neglect to fence machinery or to observe provisions of Acts or special rules, 462	1 Edw. 7, c. 22, s. 136	...	£100. Whole or part may be applied for benefit of the injured person or his family.
(h) Forging, or uttering false, certificates, entries, or declarations under the Act, where no special punishment is provided, 463	s. 139	3 mos.(h.l.)	£20
(i) Occupier (α) omitting to affix in factory or workshop the abstract of the Act, and other notices required by the Acts; or (β) omitting to keep registers of young persons or children, 461, 462	ss. 128, 129	...	(α) £2 (β) £5
FIRES.			
False alarms of, 469	58 & 59 Vict. c. 28	...	£20
FISHING.			
Angling in daytime in waters adjoining, &c. a dwelling-house, 473	24 & 25 Vict. c. 96, s. 24	...	£5 No dist. (h.l.).
Angling in daytime in private waters not adjoining, &c. dwelling-house, <i>ib.</i>	<i>ib.</i>	...	£2 No dist. (h.l.).
Taking fish in private waters not adjoining, &c. dwelling-house otherwise than by angling in daytime, <i>ib.</i>	<i>ib.</i>	...	£5 and forfeiture of the value of the fish. No dist. (h.l.).
Fishing for or dealing in fresh-water fish during close season, 475, 476	41 & 42 Vict. c. 39, s. 11	...	£2 and forfeiture of fish and (if Court thinks fit) instruments used in catching it.
Fishing for salmon in close season, 475	24 & 25 Vict. c. 109, s. 17	...	£5, and £2 for each fish; and forfeiture of fish caught and nets, &c.
Killing trout or char in close season, <i>ib.</i>	28 & 29 Vict. c. 121, s. 64	...	£2 and forfeiture of fish.

PENALTIES are recoverable by **distress** and, in default, imprisonment **without** hard labour, unless "**no dist.**" or "**h.l.**" is added.

When the amount adjudged to be paid

Does not exceed 10s.

Exceeds 10s., but does not exceed £1

Exceeds £1, but does not exceed £5

Exceeds £5, but does not exceed £20

Exceeds £20

Imprisonment not to exceed

7 days.

14 days.

1 cal. month.

2 cal. months.

3 cal. months.

As to mitigation of penalty, discharge **without punishment**, &c., see *post*, pp. 105 *et seq.*

Offence, and page in text.	Statute.	Maximum imprisonment without option of fine.	Maximum fine, forfeiture, &c.
FISHING—continued.			
Using dynamite, &c. to destroy fish, 479	40 & 41 Vict. c. 65, s. 2	2 mos.(h.l.)	£20
Using poison, lime, &c. to destroy freshwater fish, <i>ib.</i>	47 Vict. c. 11, s. 7	2 mos.(h.l.)	£20
FRIENDLY SOCIETIES.			
*Fraudulently obtaining, withholding or appropriating property of society, 488	59 & 60 Vict. c. 25, s. 87	...	£20 and delivery up of property. No dist. (h.l.).
Neglect to send notices, make returns, &c., 490	s. 84	...	£5
Wilful falsification of balance sheets, &c., <i>ib.</i>	s. 88	...	£50
GAME.			
Taking game or rabbits at night, 496	9 Geo. 4, c. 69, s. 1.	3 mos.(h.l.) & sureties	£25
Trespassing with gun, net, &c. in pursuit of game at night, <i>ib.</i>	<i>ib.</i>	3 mos.(h.l.) & sureties	£25
Trespassing in daytime in search of game, conies, &c., 498	1 & 2 Will. 4, c. 32, s. 30	...	£2 No dist. (h.l.).
If there are 5 or more persons so trespassing together, <i>ib.</i>	<i>ib.</i>	...	£5 each. No dist. (h.l.).
Trespasser in search of game refusing name, &c., or wilfully continuing on the land, <i>ib.</i>	1 & 2 Will. 4, c. 32, s. 31	...	£5 No dist. (h.l.).
Setting snares or engines to catch hares or rabbits in a warren, 500	24 & 25 Vict. c. 96, s. 17	...	£5 No dist. (h.l.).
Taking hares or rabbits in a warren in daytime, <i>ib.</i>	<i>ib.</i>	...	£5 No dist. (h.l.).
Laying poison to kill game, 501	1 & 2 Will. 4, c. 32, s. 3	...	£10 No dist. (h.l.).

* As to order where no *proof of fraud*, see 8 Edw. 7. c. 32, s. 9 (p. 489).

Offence, and page in text.	Statute.	Maximum imprisonment without option of fine.	Maximum fine, forfeiture, &c.
GAME — <i>continued.</i>			
Taking or destroying eggs, 501	1 & 2 Will. 4, c. 32, s. 24	...	5s. for each egg. No dist. (h.l.).
Unlicensed person killing or searching for game, <i>ib.</i>	s. 23	...	£5 No dist. (h.l.).
Killing game at unlawful seasons, 502	s. 3	...	£1 per head. No dist. (h.l.).
Killing or searching for game on Sunday or Christmas Day, 503	<i>ib.</i>	...	£5 No dist. (h.l.).
Selling hares out of season, 504	55 Vict. c. 8, s. 2	...	£1 (inclusive of costs).
Offences against Poaching Prevention Act, 505	25 & 26 Vict. c. 114, s. 2	...	£5 and forfeiture of game, gun, nets, &c. No dist. (h.l.).
Offences against Ground Game Act (using firearms at night, spring-traps, or poison to kill game), 507	43 & 44 Vict. c. 47, s. 6	...	£2
GAMING.			
*Keeping a common gaming-house, 508	8 & 9 Vict. c. 109, s. 4	6 mos.(h.l.)	£100
*Keeping place for unlawful gaming, or permitting a place to be kept or used for such a purpose, <i>ib.</i>	17 & 18 Vict. c. 38, s. 4	12 ms.(h.l.)	£500 (h.l.).
*Wilfully obstructing or preventing entry on suspected premises, 512	<i>ib.</i> s. 1	6 mos.(h.l.)	£100 (h.l.).
Person found on premises refusing name or address or giving false name, &c., <i>ib.</i> See Vagrants.	s. 3	1 month	£50 <i>Quære</i> whether imprisonment in default can exceed 1 month.
*Gambling in Marine Insurances.	9 Edw. 7, c. 12	6 mos.(h.l.) and forfeiture of money received.	£100 and forfeiture of money received.
GAS.			
Improperly using or burning the gas of the undertakers, or laying communicating pipe without consent, 514	10 & 11 Vict. c. 15, s. 18	...	£5 and £2 per day.

* As to option of trial by jury, see *post*, p. 63.

PENALTIES are recoverable by distress and, in default, imprisonment without hard labour, unless “no dist.” or “h.l.” is added.

When the amount adjudged to be paid

Does not exceed 10s.

Exceeds 10s., but does not exceed £1

Exceeds £1, but does not exceed £5

Exceeds £5, but does not exceed £20

Exceeds £20

Imprisonment not to exceed

7 days.

14 days.

1 cal. month.

2 cal. months.

3 cal. months.

As to mitigation of penalty, discharge without punishment, &c., see *post*, pp. 195 *et seq.*

Offence, and page in text.	Statute.	Maximum imprisonment without option of fine.	Maximum fine, forfeiture, &c.
GAS—continued.			
Injuring pipes, meters, &c., or altering index of meter, or fraudulently abstracting gas, 514	34 & 35 Vict. c. 41, s. 38	...	£5 in addition to the damage.
Undertakers neglecting to supply gas of requisite pressure, 515	s. 36	...	£2 per day.
Supplying gas under requisite pressure or of less than the prescribed power and purity, <i>ib.</i>	<i>ib.</i>	...	£20
Using unstamped meter, 514	22 & 23 Vict. c. 66, s. 17	...	£5 and forfeiture of meter.
Damaging lamps or extinguishing public lights, <i>ib.</i>	10 & 11 Vict. c. 15, s. 19	...	£5 in addition to the damage.
GUN.			
Using or carrying without licence, 516	33 & 34 Vict. c. 57, s. 7	...	£10
Refusing name and address to officer requiring production of licence, <i>ib.</i>	s. 9	...	£10
HACKNEY CARRIAGES.			
Driving a hackney carriage, plying for hire, or permitting the same to ply for hire, when it is unlicensed, 518	10 & 11 Vict. c. 89, s. 45	...	£2
Hirer refusing to pay fare, 519	s. 66	...	Fare, with costs recoverable as a civil debt.
Driver acting without licence, or proprietor employing unlicensed driver, 520	s. 47	...	£1

Offence, and page in text.	Statute.	Maximum imprisonment without option of fine.	Maximum fine, forfeiture, &c.
HAWKERS.			
Acting as hawker without licence, or refusing to produce licence, 522	51 & 52 Vict. c. 33, s. 6		£10. And see p. 523.
Omitting words "licensed hawker" from box, packages, vehicles, &c., <i>ib.</i>	s. 5	...	£10
HIGHWAY.			
Wilfully obstructing the free passage of a highway, and other nuisances thereon, 535	5 & 6 Will. 4, c. 50, s. 72	...	£2 in addition to any damage (h.l.).
Encroachments on a carriage way within 15 feet of the centre, 533	ss. 63, 69	...	£2 and expenses of removing the encroachment (h.l.).
Sinking pits, erecting engines, &c., near highways, 534	s. 70	...	£5 per day (h.l.).
Using locomotive on highway not constructed so as to consume its own smoke, 537	41 & 42 Vict. c. 77, s. 30	...	£5 per day.
Breach of regulations for working of locomotives on highway, 539	28 & 29 Vict. c. 83, s. 3; 61 & 62 Vict. c. 29, s. 5	...	£10
Using locomotive which is required to be, but is not, licensed, 541	61 & 62 Vict. c. 29, s. 9	...	£10
And see Cattle Straying; Driving and Riding; and Motor Cars.			
INDECENCY.			
Exposing person in public with intent to insult a female, 566	5 Geo. 4, c. 83, s. 4	3 mos. (h.l.)	£25
Prostitutes behaving riotously or indecently in public, <i>ib.</i>	s. 3	1 mo. (h.l.)	£5
Exposing person in a street (Town Police Clauses Act), 567	10 & 11 Vict. c. 89, s. 28	14 days	£2 <i>Quære</i> whether imprisonment in default can exceed 14 days.
Prostitutes soliciting in a street (Town Police Clauses Act), <i>ib.</i>	<i>ib.</i>	14 days	£2 <i>Quære</i> as above.

PENALTIES are recoverable by **distress** and, in default, imprisonment without hard labour, unless “**no dist.**” ^{and} or “**h.l.**” is added.

When the amount adjudged to be paid

Does not exceed 10s.

Exceeds 10s., but does not exceed £1

Exceeds £1, but does not exceed £5

Exceeds £5, but does not exceed £20

Exceeds £20

Imprisonment not to exceed

7 days.

14 days.

1 cal. month.

2 cal. months.

3 cal. months.

As to mitigation of penalty, discharge without punishment, &c., see *post*, pp. 105 *et seq.*

Offence, and page in text.	Statute.	Maximum imprisonment without option of fine.	Maximum fine, forfeiture, &c.
INDECENCY — <i>continued.</i>			
Obscene language in a street (Town Police Clauses Act), 567	10 & 11 Vict. c. 89, s. 28	14 days	£2 <i>Quære</i> as above.
Indecent Advertisement Act, 1889.			
Affixing, delivering, &c., indecent advertisements, 568	52 & 53 Vict. c. 18, s. 3	1 mo. (h.l.)	£2
Giving indecent advertisements to others to be affixed, delivered, &c., 569	s. 4	3 mos. (h.l.)	£5
INDUSTRIAL SCHOOLS.			
Serious and wilful breach of rules or escape by child 12 years of age or upwards, 570	8 Edw. 7, c. 67, ss. 71, 72.	...	May be sent to a reformatory school.
Escape of child under 12, <i>ib.</i>	s. 72.	...	To be sent back to school.
Assisting inmate or licensee in escape, or harbouring escaped child, 571	<i>ib.</i>	2 mos. (h.l.)	£20
INFANT LIFE PROTECTION.			
*Omitting to give the requisite notices and other offences against the Act, 574	8 Edw. 7, c. 67, ss. 1—8	6 mos.	£25
INFECTIOUS DISEASES (Notification Acts, 1889 & 1899).			
Failing to give notice or certificate required by Acts, 577	52 & 53 Vict. c. 72;	...	£2
INTOXICATING LIQUOR LAWS. See Drunkenness.			

* As to option of trial by jury, see *post*, p. 63.

Offence, and page in text.	Statute.	Maximum imprisonment without option of fine.	Maximum fine, forfeiture, &c.
INTOXICATING LIQUOR LAWS—<i>contd.</i>			
Person selling liquor without licence or at a place not authorised by the licence, 610	35 & 36 Vict. c. 94, s. 3	1 mo. (h.l.)	£50 and (if Court thinks fit) forfeiture of liquor and vessels. <i>Quære</i> whether imprisonment in default can exceed 1 month.
Holder of "off" licence permitting drinking "on" the premises, 615	s. 5	...	£10
Opening licensed premises, or selling or allowing consumption thereon, during closing hours, 616	37 & 38 Vict. c. 49, s. 9	...	£10
Person found on premises during closing hours, 623	35 & 36 Vict. c. 94, s. 25	...	£2
Such person refusing to give—or giving false—name or address, <i>ib.</i>	<i>ib.</i>	...	£5
Person falsely pretending to be a traveller or lodger, 624	<i>ib.</i>	...	£5
Licensed person permitting gaming, &c., on licensed premises, <i>ib.</i>	s. 17	...	£10
Licensed person permitting drunkenness, or selling to a drunken person, 627	s. 13	...	£10
Procuring drink for drunken person, 630	2 Edw. 7, c. 28, s. 7	1 mo. (h.l.)	£2
Licensed person permitting assembly of prostitutes, <i>ib.</i>	35 & 36 Vict. c. 94, s. 14	...	£10
Licensed person permitting premises to be a brothel, 631	s. 15	...	£20 and an absolute forfeiture of the licence and disqualification.
Licensed person harbouring thieves, 632	34 & 35 Vict. c. 112, s. 10	...	£10 and sureties. No dist. (h.l.). Court may direct forfeiture of licence.
Licensed person harbouring or supplying liquor to constable on duty, 633	35 & 36 Vict. c. 94, s. 16	...	£10

PENALTIES are recoverable by distress and, in default, imprisonment without hard labour, unless "no dist." or "h.l." is added.

When the amount adjudged to be paid

Does not exceed 10s.

Exceeds 10s., but does not exceed £1

Exceeds £1, but does not exceed £5

Exceeds £5, but does not exceed £20

Exceeds £20

Imprisonment not to exceed

7 days.

14 days.

1 cal. month.

2 cal. months.

3 cal. months.

As to mitigation of penalty, discharge without punishment, &c., see *post*, pp. 105 *et seq.*

Offence, and page in text.	Statute.	Maximum imprisonment without option of fine.	Maximum fine, forfeiture, &c.
INTOXICATING LIQUOR LAWS—contd.			
Refusing to quit licensed premises, 634	35 & 36 Vict. c. 94, s. 18	...	£5 (h.l.).
Licensed person not affixing name, &c., on premises, 635	s. 11	...	£10
Licensed person selling spirits to a child under 16, <i>ib.</i>	s. 7	...	£1
Licensed person selling to child under 14, 636	1 Edw. 7, c. 27, s. 2	...	£2
Sending child under 14 for liquor, <i>ib.</i>	<i>ib.</i>	...	£2
Giving liquor to child under 5 years of age, 638	8 Edw. 7, c. 67, s. 119	...	£3
Licence holder allowing child under 14 to enter or be in a "bar" except during closing hours, <i>ib.</i>	<i>ib.</i> s. 120.	...	£2
Causing child to enter or be in "bar" except as aforesaid, <i>ib.</i>	<i>ib.</i>	...	£2
Selling otherwise than by standard measure, 639	35 & 36 Vict. c. 94, s. 8	...	£10 and (if Court thinks fit) forfeiture of measure.
Making communications with licensed premises, 640	s. 9	...	£10 per day and forfeiture of the licence.
Licensed person possessing liquors not within his licence, 641	s. 10	...	£10 and forfeiture of the liquor and vessels containing it.
Refusing to permit constable to enter licensed premises, <i>ib.</i>	37 & 38 Vict. c. 49, s. 16	...	£5
Person found on premises after seizure of illicit stores, 642	s. 17	...	£2

Offence, and page in text.	Statute.	Maximum imprisonment without option of fine.	Maximum fine, forfeiture, &c.
INTOXICATING LIQUOR LAWS—<i>contd.</i>			
Offences by keepers of refreshment houses as to the consumption and sale of liquor, 643	35 & 36 Vict. c. 94, ss. 27, 28	...	£10
Keeping open licensed refreshment house during closing hours, <i>ib.</i>	37 & 38 Vict. c. 49, s. 11	...	£5
"Grogging" casks, 644	61 & 62 Vict. c. 10, s. 4	...	£50
LANDLORD AND TENANT.			
Tenant fraudulently or clandestinely removing goods to avoid distress, 649	11 Geo. 2, c. 19, s. 4	...	Double value of goods. Notice of the order must be served before distress (h.l.).
Uncertificated person levying distress, 652	58 & 59 Vict. c. 24, s. 2	...	£10
LARCENY.			
*Stealing animals not subject of larceny at common law, 661. And see Dogs, Fishing, and Game.	24 & 25 Vict. c. 96, s. 21	6 mos. (h.l.)	£20 and the value of the animal. No dist. (h.l.).
Killing, wounding, &c. house-doves or pigeons , 662	s. 23	...	£2 beyond value of bird. No dist. (h.l.).
Stealing tree, shrub, or underwood to amount of one shilling , <i>ib.</i>	s. 33	...	£5 beyond amount of damage. No dist. (h.l.).
*Stealing plants, roots, fruits or vegetables growing in gardens, greenhouses, &c. , 663	s. 36	6 mos. (h.l.)	£20 beyond value or damage. No dist. (h.l.).
Stealing cultivated roots or plants growing elsewhere than in gardens, &c., <i>ib.</i>	s. 37	1 mo. (h.l.)	£1 beyond value or damage. No dist. (h.l.).
LIBEL.			
Trivial libels by proprietors, &c., of newspapers, 671	44 & 45 Vict. c. 60, s. 5	...	£50

* As to option of trial by jury, see *post*, p. 63.

PENALTIES are recoverable by distress and, in default, imprisonment without hard labour, unless “no dist.” and “h.l.” is added.

When the amount adjudged to be paid

Imprisonment not to exceed

Does not exceed 10s.

7 days.

Exceeds 10s., but does not exceed £1

14 days.

Exceeds £1, but does not exceed £5

1 cal. month.

Exceeds £5, but does not exceed £20

2 cal. months.

Exceeds £20

3 cal. months.

As to mitigation of penalty, discharge without punishment, &c., see *post*, pp. 105 *et seq.*

Offence, and page in text.	Statute.	Maximum imprisonment without option of fine.	Maximum fine, forfeiture, &c.
LIBRARIES.			
Offences in public libraries, 672	61 & 62 Vict. c. 53	...	£2
LOTTERIES.			
Keeping an unauthorised lottery, 673	42 Geo. 3, 3 mos.(h.l.) c. 119, s. 2		£25
Selling or publishing proposals for the sale of lottery tickets, 674	4 Geo.4, c.60, 3 mos.(h.l.) s. 41		£25
LUNACY.			
Manager of institution omitting to forward patient's letters, 684	53 & 54 Vict. c. 5, s. 41	...	£20
Receiving patient for payment in unlicensed house, 686	s. 315	...	£50
Manager, &c., wilfully permitting escape of patient, 685	s. 323	...	£20
Any person in charge ill-treating or wilfully neglecting patient, 687	s. 322	...	£20
MALICIOUS INJURIES TO PROPERTY.			
Damaging tree, shrub or underwood to the amount of one shilling, 691	24 & 25 Vict. c. 97, s. 22	3 mos.(h.l.)	£5 in addition to the damage. No dist. (h.l.).
*Damaging plants, roots, fruits or vegetables growing in gardens, greenhouses, &c., <i>ib.</i>	s. 23	6 mos.(h.l.)	£20 in addition to the damage. No dist. (h.l.).
Damaging cultivated roots or plants growing elsewhere than in gardens, &c., <i>ib.</i>	s. 24	1 mo. (h.l.)	£1 in addition to the damage. No dist. (h.l.).

* As to option of trial by jury, see *post*, p. 63.

Offence, and page in text.	Statute.	Maximum imprisonment without option of fine.	Maximum fine, forfeiture, &c.
MALICIOUS INJURIES TO PROPERTY—<i>contd.</i>			
Destroying fences, walls, gates, &c., 692	24 & 25 Vict. c. 97, s. 25	...	£5 in addition to the damage. No dist. (h.l.).
Destroying telegraphs, battery, wire, posts, &c., <i>ib.</i>	s. 37	3 mos.(h.l.)	£10. No dist. (h.l.).
Wilfully or maliciously damaging any property for which no punishment is provided, where damage does not exceed £5, <i>ib.</i> And see Animals .	s. 52	2 mos.(h.l.)	£5 in addition to the damage. No dist. (h.l.).
MARGARINE.			
Breach of regulations relating to the branding of margarine and its exposure for sale by retail, 699—701	50 & 51 Vict. c. 29, s. 6 ; 62 & 63 Vict. c. 51, ss. 5, 6	...	£20
Manufacturer or wholesale dealer carrying on business in unregistered place, 703	50 & 51 Vict. c. 29, s. 9 ; 62 & 63 Vict. c. 51, s. 7 (iv.)	...	£20
Failure to keep or produce register, <i>ib.</i>	<i>ib.</i> ; 7 Edw. 7, c. 21, s. 1	...	£10
Breach of regulations as to milk-blended butter, 705	7 Edw. 7, c. 21, s. 9	...	£20
MARKETS AND FAIRS.			
Selling tollable article within prescribed limits, 706	10 & 11 Vict. c. 14, s. 13	...	£2
MASTER AND SERVANT.			
Offences relating to the characters of servants, 708	32 Geo. 3, c. 56, ss. 1-5	...	£20. No dist. (h.l.).
MEDICAL MEN.			
Falsely pretending to be a registered medical man or dentist, 709 As to Dentists , see p. 710.	21 & 22 Vict. c. 90, s. 40 ; 41 & 42 Vict. c. 33, s. 3	...	£20

PENALTIES are recoverable by distress and, in default, imprisonment without hard labour, unless “no dist.” ^{and} or “h.l.” is added.

When the amount adjudged to be paid

Imprisonment not to exceed

Does not exceed 10s.

7 days.

Exceeds 10s., but does not exceed £1

14 days.

Exceeds £1, but does not exceed £5

1 cal. month.

Exceeds £5, but does not exceed £20

2 cal. months.

Exceeds £20

3 cal. months.

As to mitigation of penalty, discharge without punishment, &c., see *post*, pp. 105 *et seq.*

Offence, and page in text.	Statute.	Maximum imprisonment without option of fine.	Maximum fine, forfeiture, &c.
MERCHANDISE MARKS ACT.			
*Offences as to falsification of trade marks and false trade descriptions, 712	50 & 51 Vict. c. 28, s. 2	4 mos.(h.l.)	£20
False representations as to place of manufacture of watch, or as to royal warrants, 718	ib. ss. 8, 20	...	£20
METALS. See Old Metal Dealers.			
MIDWIVES ACT, 1902.			
Various offences under, 720 (After April 1st, 1910, see p. 719.)	2 Edw. 7, c. 17, ss. 1, 10	“...”	£5
MILITARY.			
Making false answer on attestation, 722	Army Act, s. 99; 45 & 46 Vict. c. 48, s. 18; 7 Edw. 7, c. 9, s. 10	3 mos.(h.l.)	
Recruiting without authority, <i>ib.</i>	ib.	...	£20
Enlistment in “Territorial Force” after discharge “with disgrace,” 723 And see Deserters; Soldiers.	7 Edw. 7, c. 9, ss. 11, 24	3 mos.	£20
MONEY-LENDERS ACT, 1900.			
Various offences under, 726	63 & 64 Vict. c. 51, s. 2	...	£100

* As to option of trial by jury, see *post*, p. 63.

Offence, and page in text.	Statute.	Maximum imprisonment without option of fine.	Maximum fine, forfeiture, &c.
MOTOR CARS.			
Offences by driver as to registration and identification mark, 729	3 Edw. 7, c. 36, s. 2	...	£20
Driving without licence, or employing unlicensed driver, 730	ib. s. 3	...	£20
Failing to produce licence to constable, <i>ib.</i>	ib.	...	£5
Exceeding speed limit, 732	ib. s. 9	...	£10
Driving negligently or in dangerous manner, 734	ib. s. 1	...	£20
Driver failing to stop in case of accident, 737	ib. s. 6	...	£10
Breach of regulations as to lights, giving warning of approach, stopping at signal of constable, &c., 736	59 & 60 Vict. c. 36, ss. 2, 3, 7	...	£10
MUSICAL COPYRIGHT.			
Printing, having in possession for sale, &c. pirated copies, 746	6 Edw. 7, c. 36, s. 1	...	£5
OLD METAL DEALERS.			
Purchasing less than prescribed weight, 749	34 & 35 Vict. c. 112, s. 13	...	£5
Dealer unable to account for possession of metal unlawfully obtained, <i>ib.</i>	24 & 25 Vict. c. 110, s. 4	...	£5
Breach of regulations by registered dealer, 750	s. 8	...	£5
Dealer purchasing from juvenile apparently under sixteen, 749	8 Edw. 7, c. 67, s. 116	...	£5
PATENTS.			
Falsely representing article to be patented or a design to be registered, 751	7 Edw. 7, c. 29, s. 89	...	£5
Acting as patent agent without being registered, 752	ib. s. 84	...	£20
Unauthorised assumption of Royal Arms, <i>ib.</i>	ib. s. 90	...	£20

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When the amount adjudged to be paid

Does not exceed 10s.

Exceeds 10s., but does not exceed £1

Exceeds £1, but does not exceed £5

Exceeds £5, but does not exceed £20

Exceeds £20

Imprisonment not to exceed

7 days.

14 days.

1 cal. month.

2 cal. months.

3 cal. months.

As to mitigation of penalty, discharge **without punishment**, &c., see *post*, pp. 105 *et seq.*

Offence, and page in text.	Statute.	Maximum imprisonment without option of fine.	Maximum fine, forfeiture, &c.
PAWNBROKERS.			
Acting as pawnbroker without licence, 756	35 & 36 Vict. c. 93, s. 37	...	£50
Various offences under Pawnbrokers Act, <i>ib.</i>	ss. 12, 13, 25, 31, 32, 50	...	£10
Unlawful pawning of another's property, 757	s. 33	...	£5 and value of pledge.
PEDLAR.			
Acting without certificate, 524	34 & 35 Vict. c. 96, s. 4	...	10s.
Refusing to produce certificate, <i>ib.</i>	s. 17	...	5s.
Refusing to allow pack to be opened, <i>ib.</i>	s. 19	...	£1
PETROLEUM.			
Person occupying place in contravention of Act, 761	34 & 35 Vict. c. 105, s. 7	...	£20 per day and for forfeiture of petroleum and vessels.
Omission to fix required label, 762	s. 6	...	£5 and forfeiture.
Breach of regulations as to hawking petroleum, 763	44 & 45 Vict. c. 67, s. 2	...	£20 and forfeiture of petroleum and vessels.
As to use for <i>motor cars</i> , see p. 1203.			
PISTOLS ACT, 1903.			
Sale of pistol contrary to provisions of Act; failure to make required entries, or produce book for inspection; making false entries, 765	3 Edw. 7, c. 18, ss. 3, 4	...	£5
Purchase by person under eighteen who is not exempt from penalty under Gun Licence Act, 1870...766	s. 4	...	£2 and forfeiture.

Offence, and page in text.	Statute.	Maximum imprisonment without option of fine.	Maximum fine, forfeiture, &c.
PISTOLS ACT, 1903—contd.			
Sale to such person, 766	3 Edw. 7, c. 18, s. 4	...	£5
Sale of pistol to a person who is drunk or insane, <i>ib.</i>	s. 5	3 mos.(h.l.)	£25
POISONS.			
Offences as to sale of poisons, 768	31 & 32 Vict. c. 121, s. 17	...	£5
Breach of special restrictions on sale of sulphuric acid and certain other poisons, 770	8 Edw. 7, c. 55, s. 5	...	£5
Selling, or placing in exposed place, poisoned grain, seed, or meal, <i>ib.</i>	26 & 27 Vict. c. 113, ss. 2, 3	...	£10
Placing poisoned flesh on land, 771	27 & 28 Vict. c. 115, s. 2	...	£10
POLICE OF TOWNS.			
Various street nuisances, 772	10 & 11 Vict. c. 89, s. 28	14 days	£2. <i>Quære</i> whether imprisonment in default can exceed 14 days.
POOR.			
Pauper absconding from workhouse, refusing to work therein, &c., 791	34 & 35 Vict. c. 108, s. 7	1 mo. (h.l.)	£5
Pauper destroying his own clothes, or damaging property of guardians, 792	<i>ib.</i>	3 mos.(h.l.)	£25
Pauper in workhouse guilty of misbehaviour, <i>ib.</i>	55 Geo. 3, c. 137, s. 5	21 days (h.l.)	£5
Pauper outside workhouse refusing to do taskwork, or damaging tools, 793	29 & 30 Vict. c. 113, s. 15	1 mo. (h.l.)	£5
Misbehaviour by master of workhouse, <i>ib.</i>	4 & 5 Will. 4, c. 76, s. 93	...	£20 No dist.
POST OFFICE.			
Sending letters otherwise than by post, 795	8 Edw. 7, c. 48, s. 34	...	£5 per letter.
Letter carrier by drunkenness or otherwise endangering or delaying delivery, <i>ib.</i>	<i>ib.</i> s. 57	...	£20
Sending noxious substance or indecent matter by post, 796	<i>ib.</i> s. 63	...	£10
Injuring post office letter box, 795	<i>ib.</i> s. 61	...	£10

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7 days.

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14 days.

Exceeds £1, but does not exceed £5

1 cal. month.

Exceeds £5, but does not exceed £20

2 cal. months.

Exceeds £20

3 cal. months.

As to **mitigation** of penalty, discharge **without punishment**, &c., see *post*, pp. 105 *et seq.*

Offence, and page in text.	Statute.	Maximum imprisonment without option of fine.	Maximum fine, forfeiture, &c.
POUND BREACH.			
Where cattle straying on highway, 360	5 & 6 Will. 4, c. 50, s. 75	...	£20, No dist. (h. l.)
Where cattle in streets (Town Police Clauses Act), 361	10 & 11 Vict. c. 89, s. 26	3 months	£25
And see Cattle Straying .			
PRISONS.			
*Introducing liquors or tobacco into prison, 800	28 & 29 Vict. c. 126, s. 38	6 months	£20 ; or both fine and imprisonment.
Conveying articles in or out of prison contrary to regulations, 801	ib. s. 39	...	£10
PUBLIC HEALTH.			
Authority neglecting to remove house refuse, 809	38 & 39 Vict. c. 55, s. 43	...	5s. per day.
Connecting with sewer without notice, &c., 813	s. 21	...	£20
Building house without proper drains, 814	s. 25	...	£50
Erecting buildings over sewers or under streets without consent, 815	s. 26	...	£5 and £2 per day.
Building house without proper sanitary accommodation, 816	s. 35	...	£20
Keeping swine, suffering stagnant water to remain in cellar, or allowing contents of privy, &c., to overflow, 822	s. 47	...	£2 and 5s. per day.
Removing water pipe without notice, wasting water, fouling water and other offences as to water supply, 825	10 & 11 Vict. c. 17, ss. 51, 60, 61	...	£5 [As to s. 61 see further p. 755.]

* As to option of **trial by jury**, see *post*, p. 63.

Offence, and page in text.	Statute.	Maximum imprisonment without option of fine.	Maximum fine, forfeiture, &c.
PUBLIC HEALTH—<i>contd.</i>			
Taking water without agreement, 826	10 & 11 Vict. c. 17, s. 59	...	£10
Using water for unauthorised purpose, <i>ib.</i>	26 & 27 Vict. c. 93, s. 18	...	£2
Occupying cellars as dwellings, 829	38 & 39 Vict. c. 55, s. 71	...	£1 per day after notice.
Not affixing notice of registration to common lodging house, 830	s. 79	...	£5 and 10s. per day.
Receiving lodger in unregistered house, <i>ib.</i>	ss. 77, 86	...	£5 and £2 per day.
Disobedience of order for abatement of nuisance, 834	s. 98	...	10s. per day.
Wilful disobedience of order prohibiting recurrence of nuisance, <i>ib.</i>	<i>ib.</i>	...	£1 per day.
Refusal to obey order of justice to admit to premises, 835	ss. 102, 103	...	£5
Establishing without consent an offensive trade, 838	s. 112	...	£50 and £2 per day.
Person on whose premises unsound articles intended for food are found exposed for sale, or to whom the same belong, 840	s. 117	3 months	£20 for each animal, piece of meat, &c.
Obstruction of officer while in execution of Act, 842	s. 118	...	£5
Non-compliance with notice to cleanse and disinfect a house and articles therein, 844	s. 120	...	10s. per day.
Displacing or injuring pavement, fences, trees, &c. in streets repairable by the public, 848	s. 149	...	£5 and 5s. per sq. ft. of pavement, &c. injured.
Bringing forward buildings beyond line of street in urban district, 854	51 & 52 Vict. c. 52, s. 3	...	£2 per day.
Destroying number of house or name of street; failure to remove projection after notice; and other offences as to streets and buildings, 858	10 & 11 Vict. c. 34, ss. 64, 65, 69, 71, 74	...	£2
Using unlicensed premises as a slaughter house, 860	<i>ib.</i> s. 126	...	£5 and £5 per day after conviction.

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Exceeds 10s., but does not exceed £1

Exceeds £1, but does not exceed £5

Exceeds £5, but does not exceed £20

Exceeds £20

Imprisonment not to exceed

7 days.

14 days.

1 cal. month.

2 cal. months.

3 cal. months.

As to **mitigation** of penalty, discharge **without punishment**, &c., see *post*, pp. 105 *et seq.*

Offence, and page in text.	Statute.	Maximum imprisonment without option of fine.	Maximum fine, forfeiture, &c.
PUBLIC HEALTH—contd.			
Using unregistered premises as a slaughter house, 860	10 & 11 Vict. c. 34, s. 127	...	£5 and 10s. per day.
Omitting to affix word " licensed " or " registered " on premises used as a slaughter house, 861	38 & 39 Vict. c. 55, s. 170	...	£5 and 10s. per day.
PUBLIC MEETING ACT, 1908.			
Disorderly conduct with a view to breaking up meeting, 410	8 Edw. 7, c. 66	1 month	£5
RAILWAYS.			
Refusal to produce ticket, or pay fare, or give name and address, 863	52 & 53 Vict. c. 57, s. 5 (i.)	...	£2
Travelling without having paid the fare with intent to avoid payment , or giving false name or address, 864	s. 5 (iii.)	...	£2
Breach of bye-law, 865	8 Vict. c. 20, s. 109	...	Not exceeding £5 as imposed by the bye-law.
Obstructing railway official in execution of his duty, 866	3 & 4 Vict. c. 97, s. 16	...	£5 No dist.
Wilfully trespassing on, and refusing to quit, station or works, <i>ib.</i>	ib.	...	£5 No dist.
Sending dangerous goods by railway unmarked, <i>ib.</i>	8 Vict. c. 20, s. 105	...	£20
Employé on railway found drunk, infringing bye-laws, or acting so as to endanger passengers or impede traffic, 867	3 & 4 Vict. c. 97, ss. 13, 14; 5 & 6 Vict. c. 55, s. 17	2 mos. (h.l.)	£10 No dist. (h.l.)

Offence, and page in text.	Statute.	Maximum imprisonment without option of fine.	Maximum fine, forfeiture, &c.
RAILWAYS—continued.			
Company issuing tickets without the fare printed thereon, 867	52 & 53 Vict. c. 57, s. 6	...	£2 per ticket.
Being or passing on railway after notice, <i>ib.</i>	31 & 32 Vict. c. 119, s. 23; 34 & 35 Vict. c. 78, s. 14	...	£2
REFORMATORY SCHOOLS.			
Serious and wilful breach of rules, or inciting to such breach, 874	8 Edw. 7, c. 67, s. 71 (i.)	Detention increased by 6 mos.; or, if 16 years or upwards, 3 mos. (h.l.)	As to "Borstal," see <i>post</i> , p. 875.
Escape from school, 875	s. 72	Detention increased by 6 mos.; or, if 16 years or upwards, 3 mos. (h.l.)	
Assisting or inducing inmate or licensee to escape, <i>ib.</i>	ib.	2 mos.(h.l.)	£20
SHOPS REGULATION ACTS.			
Offences against, as to employment, 879	55 & 56 Vict. c. 62, ss. 3, 5	...	£1
Failure to exhibit required notice, 880	58 Vict. c. 5, s. 6	...	£2
Neglecting to provide seats for female shop assistants, <i>ib.</i>	62 & 63 Vict. c. 21, s. 2	...	£3
Contravention of order under Shop Hours Act, 1904...881	4 Edw. 7, c. 31, s. 5	...	£1
SMOKING (JUVENILE).			
Sale of tobacco to persons under 16...882	8 Edw. 7, c. 67, s. 39	...	£2

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Exceeds £20

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2 cal. months.

3 cal. months.

As to mitigation of penalty, discharge without punishment, &c., see *post*, pp. 105 *et seq.*

Offence, and page in text.	Statute.	Maximum imprisonment without option of fine.	Maximum fine, forfeiture, &c.
SOLDIERS.			
Making false answer on attestation, 722	44 & 45 Vict. c. 58, s. 99	3 mos.(h.l.)	...
Recruiting without authority, <i>ib.</i>	s. 98	...	£20
Buying regimental necessities or the like from a soldier, or taking pensioner's certificate in pledge, 886	s. 156 ; 54 Vict. c. 5, s. 9 ; 4 Edw. 7, c. 5, s. 9	...	£20 and treble value of property acquired by the offence.
Refusing to receive soldier when billeted, 888	44 & 45 Vict. c. 58, s. 110	...	Not less than £2 and not more than £5
Refusal to furnish carriage, &c. on a requisition of emergency, 889	s. 117	...	Not less than £2 and not more than £10
And see Deserters.			
SOLICITORS.			
Pretending to be qualified as a solicitor, 890	37 & 38 Vict. c. 68, s. 12	...	£10
STREETS.			
Nuisances in streets (Town Police Clauses Act), 772	10 & 11 Vict. c. 89, s. 28	14 days	£2 <i>Quære</i> whether imprisonment in default can exceed 14 days.
Breach of regulations as to route of carts, &c. on public occasions, &c., <i>ib.</i>	s. 21	...	£2
Offences as to streets and buildings (Towns Improvement Clauses Act), 858	10 & 11 Vict. c. 34, ss. 64, 65, 69, 71, 73, 74, 80, 81, 82	...	See pp. 858, 859, <i>passim.</i>
And see Cattle Straying, Driving and Riding, and Highways.			
SUNDAY.			
Exercising calling as tradesman, artificer, workman, &c. on Sunday, 893	29 Charles II. c. 7, s. 1	...	5s.

Offence, and page in text.	Statute.	Maximum imprisonment without option of fine.	Maximum fine, forfeiture, &c.
TELEGRAPHS.			
Forging or altering a telegram, 797	47 & 48 Vict. c. 76, s. 11	...	£10
Employé divulging contents of telegram, <i>ib.</i>	<i>ib.</i>	...	£20
Offence against "Wireless Telegraphy Act, 1904," 951 And see Malicious Injuries.	4 Edw. 7, c. 24, s. 1	...	£10 and forfeiture.
THEATRES.			
Keeping place without licence for performance of stage-plays, 902	6 & 7 Vict. c. 68, s. 2	...	£20 per day.
Acting for hire, or for hire permitting performance, in an unlicensed place, <i>ib.</i>	ss. 11, 16	...	£10 per day.
THRESHING MACHINES.			
Working whilst unfenced, 905	41 & 42 Vict. c. 12, s. 1	...	£5 per day.
TRADE BOARDS ACT, 1909.			
Not paying wages in accordance with minimum rate, 905	9 Edw. 7, c. 22, s. 6	...	£20, and daily penalty of £5 per day if continued after conviction.
TRUCK ACTS.			
Offences against Act of 1831; entering into contracts, making deductions, or receiving payments in contravention of Act of 1896... 908—912	1 & 2 Will. 4, c. 37, ss. 1, 2, 3, 9; 50 & 51 Vict. c. 46, ss. 3, 6, 7, 8, 9, 11; 59 & 60 Vict. c. 44	...	£10
Paying wages in public-houses, 913	46 & 47 Vict. c. 31, ss. 3, 4	...	£10
VACCINATION.			
Neglect to take child to be vaccinated, or to transmit certificates, 917, 918	30 & 31 Vict. c. 84, s. 29; 34 & 35 Vict. c. 98, s. 7	...	£1

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Exceeds 10s., but does not exceed £1

Exceeds £1, but does not exceed £5

Exceeds £5, but does not exceed £20

Exceeds £20

Imprisonment not to exceed

7 days.

14 days.

1 cal. month.

2 cal. months.

3 cal. months.

As to mitigation of penalty, discharge without punishment, &c., see *post*, pp. 105 *et seq.*

Offence, and page in text.	Statute.	Maximum imprisonment without option of fine.	Maximum fine, forfeiture, &c.
VACCINATION — <i>continued.</i>			
Disobedience of justice's order to produce child or to cause it to be vaccinated, 920	30 & 31 Vict. c. 84, s. 31; 34 & 35 Vict. c. 98, s. 11; 61 & 62 Vict. c. 49, ss. 2, 3, 4	...	£1
Attempt to inoculate with smallpox, 918	30 & 31 Vict. c. 84, s. 32	1 month	£5
VAGRANTS.			
Idle and disorderly persons, <i>e.g.</i> , persons who neglect to maintain family, beggars, 922	5 Geo. 4, c. 83, s. 3	1 mo. (h.l.)	£5
Rogues and vagabonds, <i>e.g.</i> , persons who desert wives or children, lodge in the open air, game in public places, or are found on premises for an unlawful purpose, reputed thieves loitering, 926	s. 4	3 mos. (h.l.)	£25
Incorrigible rogues, see p. 932			
VETERINARY			
SURGEONS.			
Fraudulent use of descriptions indicating special qualification, 711	44 & 45 Vict. c. 62, s. 17	...	£20
VOLUNTEERS (TERRITORIAL FORCE).			
Constable or overseer neglecting to comply with regulations as to notice, 723	7 Edw. 7, c. 9, s. 19	...	£20
Member of force failing to fulfil training conditions, <i>ib.</i>	s. 21	...	£5
Person making away with, or losing, &c. anything issued to him as an officer or man of the force, 724	s. 22	...	£5

Offence, and page in text.	Statute.	Maximum imprisonment without option of fine.	Maximum fine, forfeiture, &c.
WEIGHTS AND MEASURES.			
Inspector guilty of breach of duty or of regulations, 938	41 & 42 Vict. c. 49, s. 49; 4 Edw. 7, c. 28, s. 5	...	£5
Selling otherwise than by imperial standard, <i>ib.</i>	41 & 42 Vict. c. 49, s. 19	...	£2 for each sale.
Publishing market returns in other than imperial denominations, 939	s. 23	...	10s. per copy.
Using or possessing for use unauthorised weights, &c., <i>ib.</i>	s. 24	...	£5 and forfeiture.
Using or possessing for use for trade unjust weights, &c., <i>ib.</i>	s. 25	...	£5 and forfeiture.
Wilfully committing fraud in use of weights, &c., 942	s. 26; 4 Edw. 7, c. 28, s. 13	2 mos.(h.l.)	£5 and forfeiture.
Making or selling unjust weights, 943	41 & 42 Vict. c. 49, s. 27	...	£10
Using unstamped weights, &c., <i>ib.</i>	s. 29	...	£5 and forfeiture.
Obstructing entry of inspector or justice, 945	s. 48	...	£5
Various offences as to the sale of coal, 948—950	52 & 53 Vict. c. 21, ss. 20—24, 26—28	...	£5
Not keeping a weighing instrument near place of sale of coal, 951	s. 25	...	£2
Obstructing inspector entering building or weighing coal, <i>ib.</i>	s. 29	...	£5
WORKMEN.			
*Intimidation of workmen, 953	38 & 39 Vict. c. 86, s. 7	3 mos.(h.l.)	£20
Notice of accidents to Board of Trade, 956	57 & 58 Vict. c. 28, ss. 1, 2; 6 Edw. 7, c. 53, s. 6	...	£2

* Defendant may OBJECT to summary trial.

CALENDAR.

JANUARY.

Quarter Sessions in counties in the first *whole* week after the 28th December, unless specially fixed (at the previous sessions or at a special meeting of justices under 8 Edw. 7. c. 41) to be held "not earlier than fourteen days *before* nor later than fourteen days *after*" this week.

Visiting Committee of Prisons to be appointed in the first week after 28th December (see December).

10th January.—Clerk of Court of Summary Jurisdiction to send to the Home Secretary a certified statement of fines imposed during the preceding three months which are payable wholly or in part to the Crown or to the Exchequer, *post*, p. 1087.

As to the return of justices who have qualified or who have died, see Crown Office Rules, 1878 (r. 2); and as to the return of offences reported to the police, see 19 & 20 Vict. c. 69, s. 14; 55 & 56 Vict. c. 38, s. 1.

Special Sessions for hearing appeals against parochial rates to be held *four* times at least in the year, *post*, p. 15.

Special Sessions for granting alehouse and other licences to be held within *first fourteen days* of February; but the date must be fixed at a petty sessions held at least *twenty-one days before*, *post*, pp. 14, 581. And as to appointment of licensing committees in boroughs, see *post*, p. 581.

Secretary of registered club to make return to the clerk to the justices, *post*, p. 601.

Report of Probation Officer to be made to the justices in January, and forwarded by the clerk to the Home Secretary before end of February, *post*, p. 103.

FEBRUARY.

Annual Licensing Meeting within *first fourteen days*, *post*, p. 581.

Financial statement of Licensing Compensation Authority to be sent to Secretary of State not later than last day of month.

Within *first seven days* justices to issue precept to overseers requiring return of persons qualified to serve as constables, and to give notice of Special Sessions for choosing parochial constables (5 & 6 Vict. c. 109, ss. 1, 2). See *post*, p. 15.

Visiting Committee of Prison to meet at the Prison on the *first Monday* in February, at noon (unless the Committee, by Standing Order, alter the date to a day not earlier than the first Monday after all the members have been appointed, and not later than any day of the first week in February; the hour may be altered in like manner), 40 & 41 Vict. c. 21, and Secretary of State's Rules, 21st April, 1899, r. 277.

Special Sessions for hearing appeals against parochial rates to be held *four* times at least in the year, *post*, p. 15.

MARCH.

On the 25th, or within fourteen days thereafter, Special Sessions for appointment of overseers to be held in urban districts where the power of appointment has not been conferred on the local authority, *post*, p. 15.

Between the 24th *March* and the 9th *April* Special Sessions to be held for the choosing of parochial constables, *post*, p. 15.

Special Sessions for hearing appeals against parochial rates to be held *four* times at least in the year, *post*, p. 15.

APRIL.

Quarter Sessions in counties in the first *whole* week after the 31st *March*, unless specially fixed (see under *January*).

10th *April*.—Clerk of Court of Summary Jurisdiction to send to the Home Secretary a certified statement of fines imposed during the preceding three months which are payable wholly or in part to the Crown or to the Exchequer, *post*, p. 1087.

Special Sessions for hearing appeals against parochial rates to be held *four* times at least in the year, *post*, p. 15.

Clerk of Renewal Authority to send to Clerk of Compensation Authority list of matters referred before 30th *April* at the *latest* (Licensing Rules, 1904).

MAY.

Special Sessions for hearing appeals against parochial rates to be held *four* times at least in the year, *post*, p. 15.

Preliminary meeting for consideration of reports from renewal authorities to be held by compensation authority before last day of *May* (Licensing Rules, 1904).

JUNE.

Quarter Sessions in counties in the first *whole* week after the 24th *June*, unless specially fixed (see under *January*).

Special Sessions for hearing appeals against parochial rates to be held *four* times at least in the year, *post*, p. 15.

JULY.

Quarter Sessions in counties in the first *whole* week after the 24th *June*, unless specially fixed (see under *January*).

10th *July*.—Clerk of Court of Summary Jurisdiction to send to the Home Secretary a certified statement of fines imposed during the preceding three months which are payable to the Crown or to the Exchequer, *post*, p. 1087.

Special Sessions for hearing appeals against parochial rates to be held *four* times at least in the year, *post*, p. 15.

AUGUST.

Notice of Sessions for reviewing, &c., list of jurors to be given before the *20th August*, *post*, p. 15.

Special Sessions for hearing appeals against parochial rates to be held *four* times at least in the year, *post*, p. 15.

SEPTEMBER.

Special Sessions for reviewing and allowing lists of jurors to be held within the *last seven days* of the month, *post*, p. 15.

Special Sessions for hearing appeals against parochial rates to be held *four* times at least in the year, *post*, p. 15.

OCTOBER.

Quarter Sessions in counties in the first *whole* week after *11th October*, unless specially fixed (see under *January*).

Special Sessions in *boroughs* for appointment of special constables to be held during this month, *post*, p. 15.

Special Sessions in Quarter Sessions *boroughs* for appointment of "judicial authority" under the Lunacy Acts to be held during this month, *post*, p. 677. As to the appointment of "visitors" and the "licensing" of asylums, see 53 Vict. c. 5, s. 177 (vii.), 209, and see *post*, p. 15.

10th October.—Clerk of Court of Summary Jurisdiction to send to the Home Secretary a certified statement of fines imposed during the preceding three months which are payable wholly or in part to the Crown or to the Exchequer, *post*, p. 1087.

Special Sessions for hearing appeals against parochial rates to be held *four* times at least in the year, *post*, p. 15.

NOVEMBER.

Special Sessions for hearing appeals against parochial rates to be held *four* times at least in the year, *post*, p. 15.

As to the return of justices who have qualified or who have died, see Crown Office Rules, 1878 (r. 2); and as to the return of offences reported to the police, see 19 & 20 Vict. c. 69, s. 14; 55 & 56 Vict. c. 38, s. 1.

DECEMBER.

Quarter Sessions in counties in the first *whole* week after *28th December*, unless specially fixed (see under *January*).

Visiting Committee of Prisons to be appointed in the first week after *28th December*—in counties at the Quarter Sessions, and in boroughs at Special Sessions. Special provision is made as to Herts, the County of London and Worcester (Prison Rules of 21st April, 1899, r. 275).

Special Sessions for hearing appeals against parochial rates to be held *four* times at least in the year, *post*, p. 15.

LIST OF ABBREVIATIONS.

A. C. ...	...	...	Appeal Cases (Law Reports).
A. & E. ...	...	...	Adolphus & Ellis.
B. & Ad. ...	...	...	Barnewall & Adolphus.
B. & Ald. ...	...	...	Barnewall & Alderson.
B. & C. ...	...	...	Barnewall & Cresswell.
B. & S. ...	...	...	Best & Smith.
Bell, C. C. ...	...	...	Bell's Crown Cases.
Burr. ...	...	...	Burrows' Reports.
C. C. A. ...	...	...	Court of Criminal Appeal.
C. C. R. ...	...	...	Crown Cases Reserved.
Car. & Mar. ...	...	...	Carrington & Marsham.
C. B. N. S. ...	...	...	Common Bench (New Series).
Cox ...	...	...	Cox's Criminal Cases.
Cowp. ...	...	...	Cowper's Reports.
Cl. & Fin. ...	...	...	Clark & Finnelly.
C. & K. ...	...	...	Carrington & Kirwan.
C. & M. ...	...	...	Crompton & Meeson.
C. & P. ...	...	...	Carrington & Payne.
D. & B. ...	...	...	Dearsley & Bell.
D. N. S. ...	...	...	Dowling (New Series).
Dears. ...	...	...	Dearsley's Crown Cases.
Den. ...	...	...	Denison's Crown Cases.
E. & B. ...	...	...	Ellis & Blackburn.
E. B. & E. ...	...	...	Ellis, Blackburn & Ellis.
E. & E. ...	...	...	Ellis & Ellis.
F. & F. ...	...	...	Foster & Finlayson.
Hob. ...	...	...	Hobart.
H. & C. ...	...	...	Hurlstone & Coltman.
H. & N. ...	...	...	Hurlstone & Norman.
I. R. ...	...	...	Irish Law Reports.
Ir. L. R. ...	...	...	" "
Jur. ...	...	...	Jurist.
J. P. ...	...	...	Justice of the Peace.
L. G. R. ...	...	...	Local Government Reports.
L. J. ...	...	...	Law Journal.
L. M. & P. ...	...	...	Lowndes, Maxwell & Pollock.
L. R. ...	...	...	Law Reports.
L. T. ...	...	...	Law Times.
L. & C. ...	...	...	Leigh & Cave.
M. C. ...	...	...	Magistrates' Cases.
Mod. ...	...	...	Modern Reports.
M. & S. ...	...	...	Maule & Selwyn.
M. & W. ...	...	...	Meeson & Welsby.
N. & M. ...	...	...	Neville & Macnamara.
P. ...	...	...	Probate and Divorce (Law Reports).
Q. B. ...	...	...	Queen's Bench.
(189—) Q. B. ...	...	...	Law Reports (Queen's Bench).
(19—) K. B. ...	...	...	" " (King's Bench).
R. ...	...	...	The Reports.
R. & R. ...	...	...	Russell & Ryan.
S. J. ...	...	...	Solicitor's Journal.
Scotch L. R. ...	...	...	Scotch Law Reports.
T. L. R. ...	...	...	Times Law Reports.
T. R. ...	...	...	Term Reports.
Vin. Abr. ...	...	...	Viner's Abridgment.
W. R. ...	...	...	Weekly Reporter.



MAGISTRATE'S GENERAL PRACTICE.

CHAPTER I.

INTRODUCTORY OBSERVATIONS.

APPOINTMENT OF JUSTICES—THEIR QUALIFICATION AND THE
LIMITS OF THEIR JURISDICTION—PLACE OF MEETING
—JUVENILE COURTS—SPECIAL SESSIONS—POLICE MAGIS-
TRATES—DISQUALIFICATION OF JUSTICES—REFUSAL TO
ACT—CLERKS TO JUSTICES.

COUNTY justices are placed upon the commission of the peace by the Crown, through the Lord Chancellor, usually on the recommendation of the Lord Lieutenant. Such justices formerly required a qualification by estate, either by the possession of land in England or Wales of which the tenure was freehold, copyhold, or long leasehold, and the clear yearly value 100*l.*, or by being entitled to the reversion of lands of the clear yearly value of 300*l.* But any person who had, during the two years immediately preceding his appointment, occupied a dwelling-house assessed to the inhabited house duty at a value of not less than 100*l.* and who had during that time been rated in respect of such premises, might be appointed to act for the county in which the house was situate; though his right to act as a justice determined if he ceased for twelve months to hold this qualification. The qualification by *estate* formerly required of a county justice was, however, abolished by the Justice of the Peace Act, 1906 (6 Edw. 7, c. 16, s. 1). Moreover, as to the *residential* qualification, it is now provided that any person, if in other respects the law allows it, may be appointed a justice for a county notwithstanding that he does not reside in the county, if he resides within seven miles thereof (*ib.* s. 2).

Appointment
and qualifica-
tion of county
justices.

The oath of allegiance and the judicial oath, required by the Promissory Oaths Act, 1868 (31 & 32 Vict. c. 72), are taken at quarter sessions or in one of the superior courts; while the chairman of a district council on becoming a justice *ex officio* may also qualify before two county justices in petty sessions.

Acting without qualification.

It was held, under the repealed statutes, that, if the name of a justice is in the commission, his acts are not invalid, although he may not be duly qualified. The absence of qualification would, however, make his conduct unlawful, and he would render himself liable to penalties for so acting (*Margate Pier Co. v. Hannan*) (a).

Eligibility or otherwise of particular persons.

A solicitor, if otherwise qualified, may be appointed a justice for any county, but he may not, by himself or his partner, practise, directly or indirectly, before the justices for that county or any borough within it (6 Edw. 7, c. 16, s. 3). Under a statute now repealed, no solicitor practising *within the county* was eligible for office as a county magistrate (cf. *R. v. Douglas*) (b). The sheriff cannot, during the continuance of his shrievalty, act in the county of which he is sheriff, and any act done by him as a justice would be void (50 & 51 Vict. c. 55, s. 17); but no disqualification attaches to the office of coroner (*Davis v. Pembrokeshire JJ.*) (c). County court judges may be appointed magistrates for the counties in which their districts lie (51 & 52 Vict. c. 43, s. 17), and there are certain exceptions in the cases of peers, members of the privy council and a few other favoured persons.

The chairman of every county or district council is a justice for the county by virtue of his office (Local Government Act, 1888, s. 2; *ib.* 1894, s. 22). The chairman of a district council need not, *on re-election* at the expiration or other determination of a previous term of office, again take oath as justice of the peace (59 & 60 Vict. c. 22).

Appointment of borough justices.

Justices for boroughs assigned under the Municipal Corporations Act are appointed by the Crown through the Lord Chancellor, and may act without having any qualification by estate. The justice need not be a burgess, but it is necessary for him whilst acting as such

(a) (1819) 3 B. & Ald. 266.

(b) [1898] 1 Q. B. 560; 67 L. J. Q. B. 406; 46 W. R. 377; 78 L. T. 198; 62 J. P. 277.

(c) (1881) 7 Q. B. D. 513.

justice to reside within the borough or within seven miles thereof, though for this purpose a justice will be deemed to reside within the borough if he occupy any house, warehouse, or other property therein (45 & 46 Vict. c. 50, s. 157 (iii.); 6 Edw. 7, c. 16, s. 5 (ii.), Sched.). The justice, before acting, must take, before the mayor (or at quarter sessions, or in a superior court), the oath of allegiance and the judicial oath required by the Promissory Oaths Act, 1868, and he must make before the mayor, or two other members of the council, a declaration according to Sched. 8 of the Municipal Corporations Act (45 & 46 Vict. c. 50, s. 157 (ii.)). The mayor himself may take the oaths before two borough justices, or (if there be none) before two councillors. The mayor is *ex officio* a justice of the borough, and, unless disqualified to be mayor, will continue to be such a justice during the year next after he ceases to be mayor (*ib.* s. 155), and this is so although the borough may have no separate commission of the peace (*Wilson v. Strugnell*) (*d*). But, if there is no separate commission of the peace, courts of petty sessions cannot be held for the borough, except as courts for the petty sessional division of the county in which the borough is situate (*Huntingdon Corporation v. Huntingdon C. C.*) (*e*).

Borough
justices—
contd.

In a non-county borough, whether there be a separate commission of the peace or no, the mayor will also be a *county* justice in his capacity as chairman of the district council; but this does not, of course, apply to the ex-mayor.

Extent of Jurisdiction.

Within the boundaries of a *county*, any justice placed on the commission for that county is *prima facie* capable of exercising at any place and for every purpose the full powers of his office. So, too, a justice may act in a city or other precinct situate within, surrounded by, or adjoining to his county, although such place may be a county in itself or otherwise have exclusive jurisdiction. But he must not, of course, intermeddle in matters which *arise* within the place having such exclusive jurisdiction (11 & 12 Vict.

Extent of
jurisdiction of
justices so far
as regards the
place WHERE
IT IS EXER-
CISED.

(*d*) (1881) 7 Q. B. D. 548; 50 L. J. M. C. 145; 45 L. T. 219; 45 J. P. 831.

(*e*) [1901] 2 K. B. 257; 70 L. J. K. B. 755; 85 L. T. 26; 65 J. P. 675; 17 T. L. R. 521.

Pp. 962, 1002.

Jurisdiction
of justices
within
counties.

c. 42, s. 6 ; 11 & 12 Vict. c. 43, s. 6 ; and 26 & 27 Vict. c. 77). In practice, however, every county is parcelled out into districts called divisions, each of which has its own staff of justices, furnished usually from among those residing in the immediate neighbourhood. In certain cases, *e.g.*, riot or other civil commotion, a magistrate may be called upon to act in any part of the county ; but, as a general rule, all matters of an *administrative* description, which require to be performed within a division, are performed by the bench of that division, to the exclusion of external interference. Thus each division constitutes a separate and independent "licensing district," within the Intoxicating Liquor Acts, and the control of the local liquor traffic is exercised solely by its justices ; but the transfer of an outlying part of a county to another county, under s. 2 of the County Police Act, 1840 (for the purposes of various statutes relating to police constables), does not operate to transfer the licensing jurisdiction (*R. v. Worcestershire JJ., &c.*) (*f*). In fact, it may be stated, generally, that whenever any *civil* matter whatever, having reference to any locality, is referred by statute to the cognizance or control of justices, the justices of the division within which such matter arises, or to which it relates, are the only proper parties to entertain it.

Similarly, as regards *judicial* business, or matters of offence and complaint, each bench considers itself and is considered by others as told off in charge of the particular part of the county which is comprised in its own division. Indeed, as a matter of custom, courtesy, and convenience, and in some instances of express enactment, its members do not concern themselves with any affairs of this description which might be considered as having arisen, or as properly cognizable, within another division. An offender may, however, be committed for trial by a magistrate acting for a different division from that in which the offence was committed (*R. v. Beckley*) (*g*).

With respect to offences committed and matters arising *within the borough*, borough justices have a jurisdiction similar to that which county justices have in the

Jurisdiction
of borough
justices.

(*f*) [1899] 1 Q. B. 59 ; 68 L. J. Q. B. 109 ; 79 L. T. 393 ; 47 W. R. 134 ; 62 J. P. 836.

(*g*) (1888) 20 Q. B. D. 187 ; 57 L. J. M. C. 22 ; 52 J. P. 120 ; 16 Cox, 331.

county except as to gaol deliveries, quarter sessions and the making or levying of county or borough rates (45 & 46 Vict. c. 50, s. 158 (i.)). But, although their jurisdiction is thus confined to cases occurring within the limits of the borough, summonses for appearance and warrants to compel appearance, or for apprehension, as well as search warrants (but not warrants of commitment), issued by borough justices, may be served or executed *in the county in which the borough is situate, or within seven miles of the borough*, as though issued or indorsed by justices having jurisdiction in the place where the summons or warrant is so served or executed (*ib.* s. 223). The distance is to be measured in a straight line on a horizontal plane, and may be determined by reference to the Ordnance Survey maps (*ib.* s. 231). A sitting of justices, in and for any *borough* or town corporate having a *separate commission* of the peace, at a police court or other place *appointed in that behalf* is “deemed a petty sessions of the peace,” and the district is “deemed a petty sessional division” within the meaning of any Act of Parliament (12 & 13 Vict. c. 18, s. 1). As we shall see hereafter (p. 11), *county* justices may appoint places as “occasional court-houses.”

The warrant of a metropolitan police magistrate, in respect of matters within the metropolitan police district, may be executed in any part of the United Kingdom without being backed (2 & 3 Vict. c. 71, s. 17). As to *backing* warrants, see *post*, p. 44.

In the absence of some provision by charter or by special local legislation, if there is *no court of quarter sessions* for a borough, the *county* justices (except in licensing matters) have *concurrent* jurisdiction with the *borough* justices; and, if the former act as magistrates within the borough in any matter, their jurisdiction immediately attaches so as to preclude the borough justices from acting *independently* in the matter, while if the latter act first, an independent exercise of jurisdiction by the county justices will be excluded in like manner (*R. v. Sainsbury*) (*h*). “In such a case,” said *Farwell, J.*, “when once a matter within the limits of the borough has been ear-marked as county or borough business by the issue of a proper summons to appear before the county or borough tribunal, the county or

Jurisdiction
of county
justices
within
boroughs.

(*h*) (1791) 4 T. R. 456.

borough justices, as the case may be, have seisin of it, and the other set of justices, although they have concurrent jurisdiction, cannot intercept the case" (*Lawson v. Reynolds*) (i). The authority of the *county* justices includes, and that of the *borough* justices is limited to, offences committed within the borough. The county justices cannot lawfully exclude the borough justices, but they may, if they please, sit with the borough justices in petty sessions for the borough, and dispose of borough business. If, however, the borough is a county in itself, the ordinary county justices would have no jurisdiction to deal with matters arising within the borough. Again, if the borough has a separate court of quarter sessions, and was exempt from the jurisdiction of the county justices before the Municipal Corporations Act, 1835, by some statute or charter containing a *non-intromittant* clause expressly excluding them, the county justices have no jurisdiction in the borough (45 & 46 Vict. c. 50, s. 154). Since the passing of the Act of 1835, it has not been customary to include such a clause in charters of incorporation or in grants of separate courts of quarter sessions.

As we have already seen, the mayor of a non-county borough (whether there be a separate commission or no) is, during his year of office, a justice for the *county* as well as for the *borough*; while the ex-mayor is a justice for the *borough* only.

Justices appointed for two or more adjoining counties.

Pp. 962, 1002.

It is very usual when magistrates reside near the borders of counties, &c., for them to be appointed for two or more adjoining places; and, when so appointed, they may act for the one county or place whilst residing or being in the other, and the constables and officers of the county or place for which the justice so acts are required to obey and execute all his warrants, orders, and directions, and may convey before him, *whilst he is in such adjoining county*, any person whom they may apprehend (11 & 12 Vict. c. 42, s. 5; 11 & 12 Vict. c. 43, s. 6). It is no doubt true that s. 35 of the statute last cited, *i.e.*, the S. J. Act, 1848 (*post*, p. 1016), provided that the Act should not extend to any "warrant or order for the removal" of a pauper, nor to any "complaints or orders made with respect to lunatics, or the expenses incurred for the lodging, maintenance,

(i) [1904] 1 Ch. 718; 73 L. J. Ch. 451; 68 J. P. 254; 20 T. L. R. 293.

medicine, clothing, or care of any lunatic or insane person"; but, even as to these special matters, the effect of the S. J. Act, 1863 (26 & 27 Vict. c. 77), is to repeal s. 35 of the earlier Act so far as it had any operation to control s. 6 of the same Act (*post*, p. 1002), and, therefore, "the operation of s. 6 is left untouched as to the jurisdiction of justices" (*Bradford v. Clerk of Peace of Wilts*) (*k*).

It has, moreover, been affirmed by eminent authorities that, so far as *ministerial* acts are concerned (as distinguished from coercive or judicial acts), a magistrate may, in any case, perform such acts out of his own county (*R. v. Stainforth*) (*l*).

Performance of ministerial acts outside limits of jurisdiction.

At the same time it is clear, that, unless in discharge of a purely *ministerial* function as to which he has no power to withhold his assent (*cf. post*, pp. 22, 23), the justice must, in the absence of express statutory provision, act both "in" and "for" the jurisdiction.

Although, as a general rule, justices can only try offences committed within the county for which they act, yet, where a person commits an *indictable* crime in one county and then goes into another, a justice of the latter county may cause him to be apprehended. The right of a justice to call before him any person charged with having been guilty of an offence indictable in England or Wales, and being then within his jurisdiction, is absolute. The justice may proceed to take the examination of the accused, *commit him for trial* in the county where the offence was committed, and bind over the witnesses to give evidence; in short, proceed as if the offence had been committed in his own county (see *post*, p. 132, where the procedure is referred to in greater detail). Moreover, certain statutes expressly authorize, under special circumstances, the offender to be dealt with in a place other than that in which the offence was committed; thus, thieves and the receivers of stolen property may be dealt with where they are found in possession of the property (24 & 25 Vict. c. 96, ss. 96, 114). See also BIGAMY, *post*, p. 329; COIN, p. 390; EXPLOSIVES, p. 455; FORGERY, p. 483; LANDLORD AND TENANT, p. 649; MURDER,

Extent of jurisdiction of justices so far as regards the place WHERE THE OFFENCE WAS COMMITTED

(*k*) (1868) L. R. 3 Q. B. 604; 37 L. J. M. C. 129; 18 L. T. 515; 9 B. & S. 660.

(*l*) (1848) 11 Q. B. 66; and see Paley's "Summary Convictions," 8th edit. pp. 19—22.

p. 742; POST OFFICE, p. 794; the Merchant Shipping Act, 1894, s. 684, and the Marriage with Foreigners Act, 1906, s. 1 (ii.). So, too, where a union extends into several jurisdictions, the justices of any of the counties or boroughs included in the union, may, in cases in which the guardians are interested, exercise jurisdiction throughout the whole union (30 & 31 Vict. c. 106, s. 27). This section was applied to cases under the Education Acts by a section *now repealed* (i.e., 39 & 40 Vict. c. 79, s. 34) (*R. v. Eaton*) (m).

Felony or
misdemeanour
committed on
the boundaries
of counties, or
during a
journey.

Again, any *felony* or *misdemeanour* committed upon the *boundary* or *boundaries* or within *five hundred yards* of the *boundary* or *boundaries* of two or more counties, or begun in one county and completed in another, may be dealt with, tried, and punished in any one of the counties. So, again, when any such offence has been committed on any person or in respect of any property in or upon any waggon, cart, or other carriage, employed on any *journey*, whether by road or rail, or on board of any vessel employed in any *voyage* upon inland waters, the offender may be required to answer for his offence in any county through which the carriage or vessel may have passed in the course of that journey or voyage. If the side, centre, or other part of the highway or river forms the *boundary* of two counties, the trial may take place in *either* of the counties "through or adjoining to or by the boundary of any part whereof" such carriage or vessel has passed (7 Geo. 4, c. 64, ss. 12, 13).

Offences,
punishable on
summary con-
viction, com-
mitted on the
boundaries of
jurisdictions,
or during a
journey.

So, with respect to matters in relation to which justices are entitled to exercise *summary jurisdiction*, it is provided by s. 46 of the Summary Jurisdiction Act, 1879, that:

1. When an offence is committed in any harbour, river, arm of the sea, or other water running between or forming the boundary of the jurisdiction of two or more courts, it may be tried by any one of such courts.

2. When an offence is committed on the boundary of the jurisdiction of two or more courts, or within five hundred yards of such boundary, or is begun within one jurisdiction and completed in another, it may be tried by any one of such courts.

3. When an offence is committed on any person, or in respect of any property, in or upon any carriage or vehicle employed on any journey, or on board of any

(m) (1883) 8 Q. B. D. 158; 51 L. J. M. C. 31; 46 J. P. 231.

vessel employed upon inland waters, it may be tried by any court of summary jurisdiction through whose jurisdiction such carriage or vessel may have passed in the course of the journey or voyage during which the offence was committed. And if the side, bank, centre, or other part of any road, river, or canal, traversed in the course of such journey or voyage, be the boundary of the jurisdiction of two or more courts, the offence is triable in any one of such courts (42 & 43 Vict. c. 49, s. 46).

The Summary Jurisdiction Act, 1879, further enacts that, where a person is charged with an *indictable* offence mentioned in the first schedule of that Act "before a court of summary jurisdiction for any county, borough, or place, and the court have jurisdiction to commit such person for trial in *such* county, borough, or place, *although the offence was not committed therein*, such court shall also have jurisdiction to deal with the offence summarily in pursuance of that Act" (42 & 43 Vict. c. 49, s. 45).

For the list of offences included within the first schedule of the Summary Jurisdiction Act, 1879, see *post*, p. 1056.

"A ship," said *Blackburn, J.*, "is a kind of floating island" (*R. v. Anderson*) (*n*); and a British ship on the high seas is accordingly regarded as part of the realm. Such portion of the sea-shore as lies between the high and low-water marks is within and forms part of the adjoining county; and it has been held that this is so even when the tide is full and that portion of the shore, therefore, covered with water (*Embleton v. Brown*) (*o*).

As to crimes committed outside the harbours and creeks of this country and beyond low-water mark, the Indictable Offences Act, 1848, provides (s. 2) that when any "indictable crimes or offences of any kind or nature whatsoever" are committed on the high seas, *or* in any creek, harbour, or other place in which "the Admiralty of England have or claim to have jurisdiction," *or* on land beyond the seas where an indictment may legally be preferred in England, a warrant of apprehension may be issued by a justice of the county or place in which the accused is supposed or suspected to "reside or be." The Admiralty has jurisdiction upon the high seas all over

P. 1050.

Jurisdiction to deal summarily wherever there is jurisdiction to commit for trial for offences within first schedule.

P. 1050.

Offences on the coast, high seas, or abroad.

P. 960.

Form (E.),
p. 983.

(*n*) (1868) L. R. 1 C. C. R. at p. 161; 38 L. J. M. C. 12; 17 W. R. 208; 11 Cox. 198; 19 L. T. 400.

(*o*) (1860) 30 L. J. M. C. 1; 3 E. & E. 234; 25 J. P. 38.

Offences on
the coast,
high seas, or
abroad—
contd.

the world, and such jurisdiction extends over British ships and to all persons on board, whether British subjects or foreigners. This is so not only when such ships are on the high seas, but also when in foreign creeks or rivers, at a place below bridges, where the tide ebbs and flows and where great ships go (*R. v. Anderson*) (*p*). The more speedy trial of offences committed on the high seas, or in other places within the Admiralty of England, is provided for by the Admiralty Offences Act, 1844 (7 & 8 Vict. c. 2); while the Territorial Waters Jurisdiction Act, 1878 (41 & 42 Vict. c. 73), relates to the trial of offences committed on the sea near the coasts of this country, whether by foreigners or British subjects. Before the passing of the Act last cited, there was no jurisdiction to try a foreigner for a crime committed whilst passing our coasts on the high seas in a foreign ship, though within three miles of the coast (*R. v. Keyn*) (*q*). The Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), deals with offences on vessels lying or passing off the coast or being in or near navigable waters (s. 685), with offences by a British subject on board a British ship or on board a foreign ship to which he does not belong, and with offences committed by foreigners on board a British ship on the high seas (s. 686). The Act also deals with offences committed by British seamen at foreign ports (s. 687). For detailed references, see, *e.g.*, Archbold's Crim. Pl. (23rd edit. pp. 39—43); Coulson and Forbes on "The Law of Waters."

The Criminal Law Consolidation Acts of 1861 each contain a provision as to *indictable* offences committed within the jurisdiction of the Admiralty. Such offences may be tried in any county or place in which the offender "shall be apprehended or be in custody" as though actually committed in that county or place (LARCENY, 24 & 25 Vict. c. 96, s. 115; MALICIOUS DAMAGE, *ib.* c. 97, s. 72; FORGERY, *ib.* c. 98, s. 50; COINING, *ib.* c. 99, s. 36; OFFENCES AGAINST THE PERSON, *ib.* c. 100, s. 68).

Where a statute gives jurisdiction equally to "any justices," it must be taken *prima facie* to mean justices having jurisdiction according to the course of the common or statute law, *i.e.*, such as are acting in and for the

Meaning of
"any
justices."

(*p*) *Ante*, p. 9.

(*q*) (1877) 2 Ex. D. 63; 46 L. J. M. C. 17; 41 J. P. 517; 13 Cox, 403.

place where the act complained of is committed (*Re Peerless*) (r): but where a matter is referred to the cognizance of a particular description of justices, the justices acting must bring themselves within that description; for instance, "acting for the place" may sometimes mean acting for a particular petty sessional division (*R. v. Brodhurst*) (s); cf. Paley on "Summary Convictions," 8th edit. p. 42).

Justices
"acting for
the place."

So, too, when jurisdiction to deal with an offence is conferred upon the justices of a place where the offender may "happen to be," this does not mean a place to which the offender has come in answer to the summons (*Johnson v. Colum*) (t). But a person may be "found within the jurisdiction" although brought there against his will (*R. v. Lopez*) (tt).

Where
offender
"happens
to be."
"Found
within the
jurisdiction."

Place of Meeting, &c.

It is enacted by s. 12 of the S. J. Act, 1848 (11 & 12 Vict. c. 43), that the "room or place" in which justices sit to hear and try summary matters should "be deemed an open and public court, to which the public generally may have access, so far as the same can conveniently contain them." Moreover, the Summary Jurisdiction Act, 1879, expressly provides that no *case* arising under that Act or under any other Act, whether past or future, is hereafter to be heard, tried, or determined by *any court of summary jurisdiction* (whether composed of one or more justices) except when sitting in *open court*, a term which includes (i.) a petty sessional court-house, *i.e.*, a place at which justices are accustomed to assemble for the purpose of holding sessions, or a place which is for the time being appointed as a substitute for such court-house; (ii.) an occasional court-house, *i.e.*, a police station or other place previously appointed by the justices of a petty sessional division of a *county* to be used for occasional purposes (42 & 43 Vict. c. 49, s. 20 (i.), (ii.), (iv.), (v.); 52 & 53 Vict. c. 63, s. 13). A petty sessional court-house (or an occasional court-house) for the use of the justices of a *county* may be outside the

Justices must
sit in open
court.
P. 1005.
Petty ses-
sional and
occasional
court-houses.

**Pp. 1034,
1068.**

(r) (1841) 1 Q. B. 143.

(s) (1863) 32 L. J. M. C. 168.

(t) (1875) L. R. 10 Q. B. 544; 44 L. J. M. C. 185; 32 L. T. 725;
40 J. P. 135.

(tt) (1858) 27 L. J. M. C. 48; D. & B. 525; 22 J. P. 84.

P. 1064.

limits of the petty sessional division for which such court-house is provided or appointed, and may be either in the county or in any adjoining county or borough (47 & 48 Vict. c. 43, s. 8). It is a vexed question whether a magistrate must necessarily sit in "open court," as defined above, to investigate a charge of an *indictable* offence with a view to the committal of the accused for trial. The magistrate would seem to be a "court of summary jurisdiction" within the statutory definition (*post*, p. 1068); but it is contended that, even if this be so, the express power to hold the examination in a room from which the public are excluded (conferred by 11 & 12 Vict. c. 42, s. 19) is not abrogated by the Act of 1879, inasmuch as the magistrate is not hearing, trying, determining, or adjudging "a case" within the meaning of the later Act. This view appears to have been adopted in *R. v. Katz* and *R. v. Holloway*, cited *post*, pp. 128, 129. As to the power of justices in general or quarter sessions assembled, or the council of a borough, to provide petty sessional court-houses, see 42 & 43 Vict. c. 49, s. 30; 47 & 48 Vict. c. 43, s. 8, *post*, pp. 1042, 1064. The sessions cannot be held in any room (whether licensed or not) of a building licensed for the sale of intoxicants (2 Edw. 7, c. 28, s. 21).

P. 972.

Limit of power of punishment possessed by a single justice, and by justices sitting in an occasional court-house.

P. 1034.

Who acts as chairman of the bench.

Unless it is otherwise prescribed by the statute dealing with an offence, the charge must be tried before at least two justices. Moreover, the power of a *single* justice when authorized to sit alone is limited to the infliction of imprisonment for a term not exceeding FOURTEEN DAYS, or of a fine (inclusive of costs) not exceeding 20s.; and indeed, a court consisting of *several justices*, sitting *otherwise than in a petty sessional court-house*, can impose no higher penalties than those last mentioned (42 & 43 Vict. c. 49, s. 20 (vii.)). As to who shall preside when the court consists of more than one justice, it may be stated that the precedence of justices amongst themselves is generally held to depend on the date of the insertion of their respective names in the commission; but, in a division of a county, the chairman is usually chosen by his fellows. In a borough the mayor takes precedence and is entitled to occupy the chair, unless the stipendiary (if there be one) is engaged in administering justice, and this whether the mayor be a justice in his own right, or merely *ex-officio* during his year of office

under the provisions of the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50, s. 155 (ii.)). An ex-mayor, however, has no claim to precedence; and where county justices and borough justices have co-ordinate jurisdiction in matters arising within and relating to the borough, the mayor has no precedence over the county justices unless when *acting in relation to the business of the borough (ib.)*. It would seem, therefore, that, when once a matter within the limits of the borough has been *ear-marked as county business*, on the issue of a summons by a county justice for appearance before the county tribunal, the mayor of the borough, though a county justice as well as a borough justice, is not entitled, under the statute, to act, *virtute officii*, as chairman of the county justices (*Lawson v. Reynolds (u)*). The chairman (whoever he may be) assumes the general conduct of business when present, but his position entitles him to no second or casting vote, unless the privilege is expressly conferred by statute (cf., *e.g.*, *post*, p. 587). And here it may be observed that the decision of a bench must in all cases be the decision of a majority. If for instance, two justices are competent, by statute, to convict of some particular offence, and there happen to be half-a-dozen present, three of whom are in favour of a conviction and three the other way, no decision can be come to; and, unless the proceedings be adjourned for the purpose of obtaining the attendance of other justices, the defendant if in custody is entitled to be discharged. See further *post*, p. 96.

Decision must be that of majority.

Juvenile Courts, &c.

Upon the hearing of (a) a charge against a juvenile, *i.e.*, a child or young person under sixteen (unless an adult be jointly charged), or (β) an application for an order or licence relating to a juvenile whose attendance is required, the court *must* sit EITHER in a different building or room from that in which the ordinary sittings are held, OR on different days and at different times from those at which the ordinary sittings are held (8 Edw. 7, c. 67, s. 111). A court of summary jurisdiction so sitting is referred to in the Act last cited (*i.e.*, the Children Act, 1908) as a "juvenile court."

Trial of juveniles.

See also *post*, pp. 52, 80, 120, 136.

Provision must also be made for preventing association outside the court with adult defendants not charged

(u) *Ante*, p. 6.

jointly with the juvenile (*ib. s. 111 (iii.)*). And, unless by leave of the court, no person may *attend* the hearing except the court officials, the parties and their advocates, "other persons directly concerned in the case," and *bonâ fide* representatives of a newspaper or news agency (*ib. s. 111 (iv.)*).

Clearing court during evidence of juvenile.

Moreover, whilst a person who, in the opinion of the court, is "a juvenile," gives evidence in relation to "an offence against, or any conduct contrary to, decency or morality," justices *may* clear the court of all persons other than the officials, the parties and their advocates, or persons otherwise directly concerned in the case. But *bonâ fide* representatives of a newspaper or news agency may not be excluded (*ib. s. 114*).

Presence of children at trial of other persons.

Children under *fourteen*, unless infants in arms, messengers, clerks, or other persons required to attend "for purposes connected with their employment," are prohibited from being present during the trial of any other person, or during any proceedings preliminary thereto. The child, if present, must be "ordered to be removed," except when his attendance is required as a witness or "otherwise for the purposes of justice" (*ib. s. 115*).

Power to proceed if trial commenced in wrong court.

If, during a hearing in "a juvenile court," it appears that the person accused or to whom the proceedings relate is sixteen or upwards, the court *may*, nevertheless, proceed without adjournment; so, too, if a court other than a juvenile court finds itself dealing with a juvenile (*ib. s. 111 (ii.)*).

Special Sessions.

Special sessions.

Special sessions are meetings usually convened by previous notice and held, either as occasion may require or at fixed intervals throughout the year, for various statutory purposes, which are commonly of the administrative rather than the judicial description.

Special sessions are, by virtue of certain statutes, required to be holden at stated periods: thus, for the purpose (*inter alia*) of:—

(a) Granting licences for alehouses (9 Geo. 4, c. 61, ss. 1, 2; 2 Edw. 7, c. 28, s. 14), licences for beerhouses, licences for wine and refreshment houses (32 & 33 Vict. c. 27; 33 & 34 Vict. c. 29), and licences for billiard tables (8 & 9 Vict. c. 109, s. 10), special sessions must be held annually in counties and towns within the first fourteen

days of the month of February (see *post*, p. 581) in each year. The precise date must be fixed at a petty sessions held at least twenty-one days before.

Special sessions—*contd.*

(b) Transferring such licences as already mentioned, not less than *four* nor more than *eight* special sessions must be fixed, to be held on dates to be appointed at the annual licensing meeting (9 Geo. 4, c. 61, s. 4, &c.).

(c) Appointing special constables in boroughs, a special sessions must be held annually in October (45 & 46 Vict. c. 50, s. 196 (i.)); and for the appointment of parochial constables, between March 24th and April 9th (5 & 6 Vict. c. 109, s. 1, but see 35 & 36 Vict. c. 92).

(d) Reviewing and allowing the list of jurors (except in boroughs with a separate court of quarter sessions), a special sessions must be held annually within the last seven days of September. Notice of the sessions must be given before August 20th (6 Geo. 4, c. 50, s. 10; 33 & 34 Vict. c. 77, s. 14).

(e) Hearing appeals against parochial rates, a special sessions must be held *four* times at the least in the year (6 & 7 Will. 4, c. 96, s. 6). Twenty-eight days' public notice at the least must be given by fixing a notice on the church doors (*ib.*).

(f) Appointing justices to act as "judicial authorities" under the Lunacy Act, 1890, a special sessions must, in *quarter sessions boroughs*, be held in October (53 Vict. c. 5, s. 10 (ii.)). Special sessions must also be held for appointing "visitors" and "licensing" private asylums. At special sessions held at the same time as any quarter sessions, justices of a quarter sessions borough "license" houses and hospitals, and fill up vacancies amongst "visitors." The annual appointment of visitors is made by them at special sessions in October (*ib.* ss. 177, 209).

There are also provisions in the Highway Acts as to the fixing of special sessions, but justices in petty sessions may now exercise the jurisdiction as to highways formerly reserved for special sessions (27 & 28 Vict. c. 101, s. 46).

Again, there are provisions as to holding special sessions for the licensing of dealers in game, but the powers of justices in this matter are now transferred to the district council (56 & 57 Vict. c. 73, ss. 27, 32). So, too, special sessions for the appointment of overseers of the poor are to be held annually on March 25th or within fourteen days thereafter (54 Geo. 3, c. 91, s. 1);

Special
sessions—
contd.

but, now, overseers in *rural* parishes are appointed by the parish council, and the Local Government Board may, on application, confer the power of appointing overseers on the local authority of any municipal borough (including a county borough) or of any other urban district (56 & 57 Vict. c. 73, ss. 5, 33). In some cases special sessions for particular purposes are convened whenever occasion may arise, but not at any prescribed time, as, *e.g.*, in proceedings under the General Inclosure Acts.

Convening
special
sessions.

Where the Act which empowers or requires a special sessions to be holden also prescribes the particular manner in which it is to be convened, &c., its provisions must be strictly complied with; but where no such direction is to be found, as in the great majority of instances, the special sessions may be convened by any two justices, by the clerk of the peace or his deputy, or by the *custos rotulorum*. The notice must expressly state the purpose for which the special sessions is convened, and the time and place of holding; and it must be served a reasonable time before the day so fixed (*R. v. Justices of Worcestershire* (v)). There is, however, statutory provision for convening special sessions by notice signed by one justice usually acting within the particular division. A copy of such notice addressed to each justice resident and usually acting within the division, if sent by post a reasonable time before the day appointed, will be deemed to have been duly served (7 & 8 Vict. c. 33, s. 7).

Adjourning
special
sessions.
Pp. 998, 1004.
1008.

There is no *general* statutory power to adjourn a special sessions, unless the case is one which falls within the operation of 11 & 12 Vict. c. 43, ss. 1, 9, or 16; but the justices having once entered upon a matter in special sessions may, of course, adjourn the hearing or determination of the particular case (Oke, 13th edit. p. 1188).

Police Magistrates.

Police and
stipendiary
magistrates.

Police magistrates for the metropolis are appointed by the King on the nomination of the Home Secretary under the provisions of the 2 & 3 Vict. c. 71; and a stipendiary magistrate is appointed by the Home Secretary in similar manner for provincial towns and populous districts either under the Municipal Corporations Act (45 & 46 Vict. c. 50, s. 161; and see 6 Edw. 7, c. 46) or under

(v) (1818) 2 B. & Ald. 228.

local Acts. The local authority of a city or place having 25,000 inhabitants may, too, procure the appointment of a stipendiary for their district (26 & 27 Vict. c. 97, s. 3).

A police or stipendiary magistrate, it may be remarked, has power, when sitting in his police court alone, to do any act, and exercise any jurisdiction, which can be done or exercised by two or more ordinary justices, even although such act or jurisdiction be expressly required by statute to be done or exercised by justices in a "petty sessional court." But he has no extraordinary authority to act as justice of the peace in business transacted at special sessions or at quarter sessions. Beyond the limits of the jurisdiction of the metropolitan police courts, however, he may act as one of the justices empowered to grant or confirm licences so far as regards any licensing district wholly or partly within his jurisdiction (35 & 36 Vict. c. 94, s. 39). The Lord Mayor or an alderman of London may also, when sitting alone, do acts which are required to be done by a court consisting of at least two justices (42 & 43 Vict. c. 49, s. 20).

P. 1068.

P. 1035.

When a stipendiary magistrate has been appointed for a district, he or his deputy must hear all cases arising under the Conspiracy and Protection of Property Act, 1875, the Trade Union Acts, 1871 and 1876, or the Law of Distress Amendment Act, 1908.

Disqualification.

Before proceeding to hear and adjudicate upon any matter, a justice should consider whether there is any reason for his declining to act. He may be precluded from acting by statute, as, *e.g.*, if he has been adjudged *bankrupt* and his bankruptcy has not been annulled. This disqualification would, however, be removed if he had obtained from the court his discharge, with a certificate that his bankruptcy was caused by misfortune and not by his own misconduct (46 & 47 Vict. c. 52, ss. 32, 169). Moreover, the disqualification would not extend for more than five years from the date of discharge, although such certificate were not granted (53 & 54 Vict. c. 71, s. 9). So, too, the Factory Act, 1901 (1 Edw. 7, c. 22, s. 144), disqualifies a person who is occupier of a factory or workshop to which the Act applies, or the *father, son or brother* of such

Disqualifica-
tion of justice
by statute.

Bankruptcy.

Factory Acts.

Disqualifica-
tion of justice
by statute
—*contd.*

*Coal Mines
Regulation
Act.*

*Trade Union
Act.*

Lunacy Acts.

Disqualifica-
tion by
pecuniary
interest or
bias.

Statutory
removal of
disqualifica-
tion in certain
cases.

occupier, from acting as a member of a court of summary jurisdiction in respect of any offence under that Act; nor may any person engaged in, or being an officer of any association of persons engaged in, the same trade or occupation as the person charged with an offence act as a justice at the hearing of the charge. And, by the Coal Mines Regulation Act, 1887 (50 & 51 Vict. c. 58, s. 69), the owner, agent, or manager of any mine to which the Act applies, or a miner or miner's agent, or the *father, son, brother, father-in-law, son-in-law, or brother-in-law* of such owner, agent, or manager, or of a miner or miner's agent, as well as the director of any company being the owners of a mine, is disqualified in the same way. Again, s. 22 of the Trade Union Act, 1871 (34 & 35 Vict. c. 31), provides that no person who is the master, or the *father, son or brother* of a master, in the particular manufacture, trade, or business in or in connexion with which an offence is charged, shall sit as a member of the court. In regard to the granting of licences to houses for the reception of lunatics, the Lunacy Act, 1890, enacts that no person shall act in granting any such licence if he is, or within one year next preceding has been, interested in a licensed house (53 Vict. c. 5, s. 208). Similar provisions are contained in other statutes, *e.g.*, the LICENSING ACTS (*post*, p. 603) and the TRUCK ACTS (*post*, p. 910). As to disqualifications arising out of corrupt practices at parliamentary and municipal elections, see 45 & 46 Vict. c. 50, ss. 78, 79; 46 & 47 Vict. c. 51, s. 38 (vi.).

And quite apart from any statutory prohibition, a magistrate should carefully refrain from taking any part in any proceeding in which he has the slightest individual *pecuniary interest* or *personal leaning*; for "whenever there is a real likelihood that he would, from kindred or any other cause, have a *bias* in favour of one of the parties, it would be very wrong in him to act" (per *Blackburn, J.*, *R. v. Rand*) (*x*). There are, however, several statutes which operate to remove particular disqualifications. Thus, by the Justices of the Peace Act, 1867 (30 & 31 Vict. c. 115, s. 2), a justice may act on the trial of any offence arising under an Act to be put in

(x) (1866) L. R. 1 Q. B. 230; 35 L. J. M. C. 157.

execution by a local authority, although he be one of several ratepayers liable to contribute to, or be benefited by, any fund to the account of which the penalty is directed to be carried; and by the Public Health Act, 1875 (38 & 39 Vict. c. 55, s. 258), it is provided that no justice is to be deemed incapable of acting thereunder by reason of his being a member of any local authority, or being a ratepayer, or one of any class of persons liable to contribute to, or be benefited by, any rate or fund (*R. v. Weymouth JJ.*) (y). There is, too, a like clause in the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76, s. 122); and as to *borough* rates, see 45 & 46 Vict. c. 50, s. 158 (ii.). A justice may, it has been held, act at *special* sessions on the hearing of a rating appeal, although a ratepayer in the parish in which the rate appealed against was made (*Ex parte Workington*) (z). It is provided also by the Gasworks Clauses Act, 1871 (34 & 35 Vict. c. 41, s. 46), that no justice shall be disqualified from acting in its execution by reason of his being liable to the payment of any gas rent or other charge thereunder.

Removal of
disqualifica-
tion—*contd.*

There are, too, similar provisions in the Acts relating to salmon fisheries (28 & 29 Vict. c. 121, s. 61). A justice is not to be disqualified by reason only of his being a conservator or subscriber to a society for the protection of salmon; though, of course, he may not adjudicate in respect of an offence committed on his own lands. And, where one of the justices was a member of a board of conservators and, as such, had voted in favour of a resolution directing the particular prosecution, it was held that he was disqualified notwithstanding the terms of the Act of 1865 (*R. v. Henley*) (a).

Indeed, notwithstanding any such general statutory provision, it is clear that no person by whom a prosecution has been directed, or who has such substantial interest in its results as makes it likely that he has a personal leaning towards a conviction, ought to adjudicate or even sit upon the bench during the hearing of

Nature of
disqualifica-
tion by
interest.

(y) (1879) 4 Q. B. D. 332; 48 L. J. M. C. 130; 27 W. R. 659.

(z) *Post*, p. 783.

(a) [1892] 1 Q. B. 504; 61 L. J. M. C. 135; 66 L. T. 675; 56 J. P. 391; 40 W. R. 383.

Nature of
disqualifica-
tion by
interest—
contd.

the charge (*R. v. Henley* (b) ; *R. v. Gaisford* (c)). It was, however, held that, although a justice was a member of a local society affiliated to a London Society for the Prevention of Cruelty to Animals, he was not disqualified from adjudicating where the prosecution had been instituted by the parent society (*R. v. Deal*) (d). So, too, where justices, as members of a county council, were mere trustees for ratepayers affected by a rating appeal (*R. v. Middlesex JJ.*) (e). Nor will the circumstance that a justice is known to hold strong views on a subject, of itself, serve to disqualify him (*Ex parte Wilder*) (f). The question, in truth, is one of *fact*, whether, in the circumstances of the particular case, there was a "real likelihood" of the existence of bias (*R. v. Tempest*) (g); and, indeed, in a case initiated by the Incorporated Law Society, a magistrate was held competent to act although himself a country subscriber to the society, on the ground that he had no control over the institution of prosecutions and the risk attaching to him as to costs was remote and purely speculative (*R. v. Burton*) (h). Nor would the fact that a magistrate had been subpoenaed to give evidence, or had tried to induce the parties to settle the matter out of court, necessarily prove sufficient to obtain from the court a prohibition against his sitting to decide the case (*R. v. Farrant*) (i). But, where a justice was himself an appellant at special sessions convened to hear appeals against assessments to the poor rate, he was held to be clearly disqualified from adjudicating upon the cases of appellants similarly situated to himself. When his own case was reached the justice in question left the bench and conducted the appeal in person in the body of the court (*R. v. JJ. of Great Yarmouth*) (j). And, if a magistrate is himself a shareholder in a railway company, he should abstain from

(b) *Ante*, p. 19.

(c) [1892] 1 Q. B. 381; 61 L. J. M. C. 50; 56 J. P. 247.

(d) (1882) 45 L. T. 439; 46 J. P. 71; 30 W. R. 154.

(e) (1908) 72 J. P. 251; 6 L. G. R. 739.

(f) (1902) 66 J. P. 761.

(g) (1902) 86 L. T. 585; 66 J. P. 472; 18 T. L. R.

(h) [1897] 2 Q. B. 468; 77 L. T. 364; 61 J. P. 727.

(i) (1888) 20 Q. B. D. 58; 57 L. J. M. C. 17; 57 L. T. 880;
52 J. P. 116.

(j) (1882) 8 Q. B. D. 525; 51 L. J. M. C. 39; 30 W. R. 460.

taking any part in adjudicating upon matters arising out of alleged breaches of the bye-laws (*R. v. Hammond*) (*k*). So, too, if the justice, although having no direct interest in the case, is a member of a *small* privileged class for the protection of whose privileges the section under which proceedings are taken was intended to provide (*R. v. Huggins*; *Ex parte Clancy*) (*l*).

If a justice has such an interest as might give him a real bias in the matter, he should withdraw during the whole case. Should he take part in the hearing or decision, the result would be to render it void. When the case is called on, he should at once voluntarily retire from the bench, or should openly state the fact that he is interested, and inquire whether any objection be made. If an interested justice merely remains upon the bench, that may be sufficient to invalidate the proceedings (per *Kay*, L.J., in *R. v. Budden*) (*m*). Thus, for example, in one case, the chairman of a local authority sat on the bench during the hearing of proceedings instituted by the authority in respect of the alleged pollution of a stream. He took no part in the case or in the decision, yet the court held that he "was really sitting in a case in which he was interested," and refused "to enter into the question whether he sat as a mere ornamental personage" (*R. v. Meyer*) (*n*). It is very important that no magistrate who is interested in the case before the court should interfere whilst it is being heard, in any way that may create a suspicion that the decision is influenced by his presence or interference (per *Wightman*, J., in *R. v. Suffolk* (*o*), cited by *Lindley*, L.J., with approval, in *R. v. Budden*) (*p*). If the parties know of the disqualification they must take objection at the earliest possible stage, for they cannot lie by and take the chance of a decision in their favour, and then, after the conviction or order, turn round and seek to avert the consequences by raising the objection (*Wakefield Local*

Interested justice must withdraw from the bench.

Waiver of objection as to disqualification by interest.

(*k*) (1864) 9 L. T. 422; 27 J. P. 793; 12 W. R. 208.

(*l*) [1895] 1 Q. B. 563; 64 L. J. M. C. 149; 72 L. T. 193; 59 J. P. 104; 43 W. R. 329.

(*m*) (1895) 60 J. P. 166.

(*n*) (1875) 1 Q. B. D. 173; 34 L. T. 247; 24 W. R. 392.

(*o*) (1852) 18 Q. B. 416.

(*p*) *Supra*.

Board of Health v. West Riding and Grimsby Railway (q); and cf. *R. v. Burton* (r). Acquiescence will not, however, deprive a party of his right to challenge the adjudication if the justice states the extent of his interest in such a way as to mislead the parties in regard to his true position in the matter (cf. *R. v. Cumberland J.J.*) (s).

Justices refusing to act.

Mandamus, &c.

When justice
may decline
to act.

Notwithstanding that the justices, on a matter being brought before them, are properly qualified to dispose of it, they may nevertheless *be unwilling* to do the act required of them. If in such case they have a discretion given them by the statute, and there is no corrupt or improper motive actuating them, they are entitled to refuse to act; if no discretion is given them, but to act is imperative, they must do the act required; or, in other words, where the statute confers upon them authority to do a *ministerial* act as distinguished from a *judicial* act, they cannot decline their jurisdiction.

What are
ministerial
acts.

R. v. Webber.

Thus, a justice *must*, when called upon, back a warrant on receiving the necessary proof of its due issue; receive and hear an information or complaint; take the necessary recognizances to enable a convicted person to appeal if tendered in due form; allow a poor rate which is good on the face of it; issue a distress warrant for non-payment of rates or for costs on a conviction; take bail, &c. But it is not always easy to draw the distinction, as is shown, *e.g.*, by the case of *R. v. Webber* (t). There, on an application for a *certiorari* to quash a distress warrant, it appeared that a claim had been made against the applicant by guardians of the poor, for arrears under an order for the relief of pauper parents. The applicant had objected that the guardians continued payments after his father had obtained work; but, quite apart from this objection, it appeared that the *warrant of distress* had been issued by a justice without any proceedings to ascertain

(q) (1866) L. R. 1 Q. B. 84; 35 L. J. M. C. 69.

(r) Cited *ante*, p. 20.

(s) (1888) 58 L. T. 491; 52 J. P. 502.

(t) (1899) 16 T. L. R. 1; 43 Sol. J. 826.

the amount (if any) of the arrears in fact due under the order. The applicant in vain sought to induce a court of summary jurisdiction to discharge this warrant, and his goods were seized thereunder. Yet the court refused him relief on the ground that the issuing of the distress warrant was a *ministerial*, and not a *judicial*, act; while *Darling, J.*, is reported to have added that, even if this were not so, the court would in its discretion refuse the writ. It does not appear how the court dealt with the fact that, prior to the issue of the warrant, there had been no summons on complaint for disobedience of the order (cf. *post*, p. 785).

What are
ministerial
acts—*contd.*

It must not be assumed that where a statute enacts that "it shall be lawful for justices" to do so and so, or provides that they may take a particular step "if they shall think fit," it is necessarily intended that they should consult merely their own inclination in the matter. Such phrases, it has been said, are part of the courtesy of Parliament when dealing with courts of justice; and when it is declared that it shall be lawful for them to do a certain thing, this may be a gracious way of saying that it shall be unlawful for them to do anything else (*Ex parte Neath Railway*) (*u*).

The true principle of the matter was lucidly explained by *Lord Cairns* in *Julius v. The Bishop of Oxford* (*x*): "The words, 'it shall be lawful,' or their equivalent, are plain and unambiguous. They are words merely making that legal and possible which there would otherwise be no right or authority to do. They confer a faculty or power, and do not of themselves do more. But there may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person for whose benefit the power is to be exercised, *which may couple the power with a duty*, and make it the duty of the person in whom the power is reposed to exercise that power when called upon to do so. Whether the power is one coupled with such a duty is a question which, speaking generally, it falls to the Court of Queen's Bench to

Application
for *mandamus*.

(*u*) (1874) 43 L. J. Ch. 277.

(*x*) (1880) L. R. 5 App. 214; 44 J. P. 600.

decide, upon an application for a *mandamus*. And the words 'it shall be lawful' being, according to their natural meaning, permissive or enabling only, it lies upon those who contend that the power, in any particular instance, is so coupled, to show, in the circumstances of the case, something which creates this obligation. *Enabling words are always compulsory when they are words to effectuate a legal right.*"

Again, if justices take into consideration matters absolutely apart from those which by law ought to be taken into consideration, the conviction, order, or other determination may be questioned by *mandamus*, and they will be directed to "hear and determine according to law" (cf. *R. v. Cotham*) (y). But, while the Court has authority to issue a *mandamus* to hear and determine, it has no authority to control the magistrate in the conduct of the case, or to prescribe to him the evidence which he shall receive or reject (per *Cockburn*, C.J., in *R. v. Carden*, cited *post*, p. 144; and cf. *Bottomley's case*, *post*, p. 130).

When justice may refuse to issue a summons.

A justice may refuse to issue a summons, after hearing the application and considering the information, if he does so upon grounds which he is entitled judicially to entertain; but he must not refuse a summons *without going into the merits*, on the ground, *e.g.*, that the application is prompted by spite, and is not brought in the public interest. The Queen's Bench Division held that the court had no power by *mandamus* to review the decision of a justice either as to law or fact, if he had *bona fide* exercised his discretion and come to the conclusion that the information did not disclose an indictable offence, he having brought his mind to bear upon the question whether or not he had jurisdiction to grant the summons (*Ex parte Lewis*) (z). And, indeed, even although there be evidence of an alleged indictable misdemeanour, a magistrate (in exercise of the discretion conferred by s. 9 of the Indictable Offences Act, 1848, *post*, p. 964) may refuse the summons if he considers its issue would be vexatious or improper. Thus, a summons being refused on an information under the Catholic Relief

(y) [1898] 1 Q. B., per *Willis*, J., at p. 806.

(z) (1888) 21 Q. B. D. 191; 57 L. J. M. C. 109; 52 J. P. 773.

Act, 1829, charging certain persons with having been admitted and become Jesuits within the United Kingdom, the court declined to interfere. The magistrate appears to have taken into consideration that the Act had not been put in force, that its object was to rid the country of Jesuits years ago, and he thought proceedings should be taken, if at all, by the Crown and not by private individuals. There seems to be no legal bar to proceedings under the Act being instituted by a private individual; but the court, taking into account, amongst other things, that the matter was not within the Vexatious Indictments Acts, refused to interfere, holding that the magistrate had exercised a discretion and not declined jurisdiction (*R. v. Kennedy*) (a). And see further, *post*, p. 41.

If justices form a mistaken opinion as to their *summary* jurisdiction, and refuse to entertain an application or to hear a case, a rule may be obtained under the Justices' Protection Act, 1848 (11 & 12 Vict. c. 44, s. 5), whereby it is enacted that in all cases where a justice or justices of the peace shall *refuse* to do any act relating to the duties of his or their office as such justice or justices, it shall be lawful for the party requiring such act to be done to apply to the King's Bench Division, upon an affidavit of the facts, for a *rule* calling upon such justice or justices, and also the party to be affected by such act, to show cause why such act should not be done; and if, after due service of such rule, good cause shall not be shown against it, the said court may make the same absolute, with or without or upon payment of costs, as to them shall seem meet; and the said justice or justices upon being served with such rule absolute shall obey the same, and shall do the act required; and no action or proceeding whatsoever shall be commenced or prosecuted against such justice or justices for having obeyed such rule, and done such act so thereby required as aforesaid.

But care must be taken to distinguish accurately between a mistaken erroneous exercise of jurisdiction in deciding not to act, and a refusal to act based upon erroneous grounds and amounting to a declining of jurisdiction

King's Bench
Division may
by *rule* order
justice to act
—*Justices'*
Protection
Act, 1848.

(a) (1902) 18 T. L. R. 557; 86 L. T. 753; 50 W. R. 633.

Justices' Protection Act, 1848—
contd.

(cf. *R. v. Byrde* (b) ; *R. v. Marsham* (c). The rule under the last cited statute and the rule for a *mandamus* are practically concurrent remedies (cf. *R. v. Biron* (d), and the court will not interfere if the real matter complained of is some decision of the justices which they had authority to make, i.e., an erroneous adjudication and not a declining of jurisdiction. In such circumstances, the remedy, if any, would be an appeal by way of *special case* (see *post*, p. 158). Where, however, the question at issue is a real one, and there is a deliberate refusal to exercise jurisdiction on the part of the justices, the court will not decline to decide the point raised, on the facts being stated, merely because the refusal was in order to raise the point in a convenient form (*R. v. Charlesworth*) (e).

As in the case of a prerogative writ of *mandamus*, the rule can be moved for only by counsel (*Ex parte Wallace*) (f).

Finality of
justices' decision on
question of
fact.

The High Court will not as a rule interfere with the decision of justices on a question of *fact*. But, if the question is one *preliminary* to their jurisdiction, so that the finding of fact is not arrived at *in the exercise* of such jurisdiction, the High Court will examine the sufficiency of the evidence upon which the justices have acted. It is a well-established principle that no court can give itself jurisdiction by a wrong decision on a point (collateral to the merits of the case) upon which the limit to its jurisdiction depends (*Bunbury v. Fuller* (g) ; and cf. *R. v. Farmer*, cited *post*, p. 58). But, if there has been a real *conflict of testimony* upon some fact which goes to the jurisdiction, the High Court will not interfere, except for very strong reasons (cf. *post*, p. 533 ; *R. v. Bradford*) (h).

As to CERTIORARI and PROHIBITION, see *post*, p. 163.

Clerks to Justices.

Duties of justices' clerk.
P. 1086.

It is the business of the clerk to assist the justices generally ; to advise them when necessary as to matters

(b) (1891) 60 L. J. M. C. 17 ; 55 J. P. 310.

(c) [1892] 1 Q. B. 371 ; 56 J. P. 164.

(d) (1885) 14 Q. B. D. 474 ; 54 L. J. M. C. 77 ; 51 L. T. 429 ; 49 J. P. 68.

(e) (1851) 20 L. J. M. C. 181.

(f) [1902] 2 K. B. 488 ; 71 L. J. K. B. 788 ; 18 T. L. R. 740.

(g) (1854) 23 L. J. Ex. 29.

(h) *Post*, p. 533 ; and see 72 J. P. at p. 157.

of law and of practice; to take minutes of the proceedings; to receive and transmit all fines, and to perform an immense variety of duties which cannot be satisfactorily executed except by a man of education, intelligence, and discretion (cf., *e.g.*, 11 & 12 Vict. c. 43, *i.e.*, S. J. Act, 1848, s. 31, *post*, p. 1015). The office is clearly incompatible with that of magistrate; and, where the clerk himself became a justice, it was held that he might lawfully adjudicate, although he had continued to draw the clerk's salary, inasmuch as his acceptance of the office of justice vacated his former office (*R. v. Douglas*) (*i*). In boroughs without a separate commission of the peace, the mayor and ex-mayor are not entitled to appoint a separate clerk; but the justices of the county petty sessional division may appoint a separate clerk in respect of each place appointed for holding petty sessions in the division (*Huntingdon Corporation v. Huntingdon C. C.*) (*j*). Clerks appointed since the passing of the Justices' Clerks Act, 1877 (40 & 41 Vict. c. 43), must as a rule be barristers of not less than fourteen years' standing, or solicitors (see s. 7 as to the qualifications and disqualifications; and further s. 48 of the Summary Jurisdiction Act, 1879, *post*, p. 1052; and as to clerks in boroughs, 45 & 46 Vict. c. 50, s. 159). Under the Act of 1877 remuneration is now made by fixed salary, instead of, as formerly, being provided by the court fees. The fees themselves go in aid of the county or borough rate. A table of certain fees authorized at petty sessions must be exhibited in each petty sessional court-house. The person at whose instance any work is performed by the clerk is primarily liable to pay him for it, and the clerk is not bound to act without his fee. Thus, in the case of an ordinary information, the prosecutor must accept the risk of having to pay the costs of the hearing, &c.; and, if no order be made that the defendant pay the costs, or if the costs ordered cannot be recovered by distress or otherwise, he may be called upon to discharge them in earnest. But this liability is a mere debt, and must be enforced, if at all, in the county court (*Drew v. Harris*) (*k*). In an action against

Right to
claim fees.

(*i*) [1898] 1 Q. B. 560; 67 L. J. Q. B. 406; 78 L. T. 198; 62 J. P. 277.

(*j*) *Ante*, p. 3.

(*k*) (1850) 14 J. P. 26.

Remission of
fees.

P. 1087.

Prosecutions
conducted by
justices'
clerks.

a station-master, who had given a man into custody on a charge of picking pockets in the station, the clerk failed to recover. The prisoner was convicted under the Vagrancy Act on the evidence of the station-master, but it was held that the latter had not taken the proceedings (*Reddish v. Hitchenor*) (*l*). Justices have no power to interfere in such a matter. Authority is, however, given to any "justices or justice before whom any proceeding is had" to remit the fees, either wholly or in part, when, owing to poverty, or other reasonable cause, it seems proper that this indulgence should be shown; and, in such case, "the justice or two or more of the justices authorizing such remission" must sign the entry in the Remitted Fees Book (14 & 15 Vict. c. 55, s. 12). Much discussion has taken place in reference to the practice (obtaining in several counties) of certain clerks to justices who, either by themselves or by partners, have acted as solicitors in the prosecution of persons committed from their petty sessional district to assizes for trial. The practice has some obvious objections, and more than one learned judge has emphatically condemned it. The practice is forbidden in *boroughs* under heavy statutory penalties (45 & 46 Vict. c. 50, s. 159; and see in L. T. newspaper, vol. xc., p. 104, the observations of *Wills, J.*, upon the matter).

In the case of *R. v. Bushell* (*m*), *Coleridge, L.C.J.*, directed that counsel retained by the private prosecutor (as distinguished from the constable bound over by justices to prosecute at assizes) should conduct the case in preference to counsel instructed by the clerk to justices, who, in accordance with usual custom, had prepared a brief and instructed counsel.

Register to be
kept.

If justices convict, or make an order against, a defendant, a "minute or memorandum thereof" must (as we shall see hereafter, p. 98) be made forthwith; and the clerk of every court of summary jurisdiction is required to keep a REGISTER of the minutes of all the convictions and orders of such court in a form prescribed by the statutory rules (see Rules 3—12, *post*, p. 1086). The entries relating to each minute must be either entered or signed

(*l*) (1878) 48 L. J. M. C. 31; 40 L. T. 65; 43 J. P. 41.

(*m*) (1888) 52 J. P. 136; 16 Cox, C. C. 367.

by the justice or one of the justices constituting the court by or before whom the conviction is made (42 & 43 Vict. **P. 1036.** c. 49, s. 22). This register, or a certified extract therefrom, is to be "*primâ facie* evidence" for the purpose "of informing" a court acting for the same county, borough, or place; but this provision is *not* to "dispense with the legal proof of a previous conviction for an offence when required to be proved against a person charged with another offence" (*ib.*, s. 22 (ii.)). It has, however, been decided (following *London School Board v. Harvey*) (*n*) that the register of the minutes of convictions, which has to be kept under this section, is admissible in evidence to prove a *previous conviction* of the defendant for a similar offence *in the same court* (*Commissioner of Police v. Donovan*) (*o*). "I think," said *Wills, J.*, "that this is a case in which the common law doctrine applies, and the *previous convictions having been in the same court*, the court has the right to resort to them." As to proof of previous convictions, see further pp. 106, 136.

For the "Regulations" governing the allowances payable to prosecutors and witnesses in criminal prosecutions, see the Orders cited, *post*, pp. 1122 *et seq.* These regulations apply to the summary trial of indictable offences, and to proceedings instituted before an examining justice, with a view to the committal of the accused on an indictable charge (*cf. post*, pp. 131, 139, 146).

Regulations
as to costs of
criminal
prosecutions.

(*n*) *Post*, p. 429.

(*o*) [1903] 1 K. B. 895; 72 L. J. K. B. 545; 67 J. P. 147.

CHAPTER II.

HOW PROCEEDINGS BEFORE JUSTICES ARE COMMENCED, AND
HOW TO PROCURE THE ATTENDANCE OF THE PERSON
CHARGED.

Complaint or Information.

Meaning of
"complaint"
and "infor-
mation,"
"order," and
"conviction."

THE mode of commencing proceedings before justices of the peace is by preferring a *complaint* or an *information*. The preliminary step is designated a *complaint* when an ORDER is sought for the payment of money "or otherwise," *i.e.*, for the performance of some act. The term includes orders of every description which a justice has authority to make, as, *e.g.*, an order under a local Act directing the demolition of buildings erected contrary to certain requirements of a sanitary authority (*Morant v. Taylor*) (a). As to what does *not* amount to an order, see *R. v. Edwards* (b): "How can that be an order which neither expressly nor impliedly directs anything to be done nor says that any consequences are to follow if a thing is not done?" (per *Bowen*, L.J., 13 Q. B. D. at p. 595). One justice may receive the complaint and issue a summons thereon with a view to obtaining the order. The preliminary step is called an *information* when it is the foundation for summary proceedings of a *criminal* nature, which are followed either by a conviction or by an acquittal. One justice may receive such an information and cause the defendant to be brought before the court by the issue of a summons or warrant. An information may properly be dispensed with, in certain rare cases, where justices are authorized to convict upon their own view of the commission of an offence, as, *e.g.*, for certain offences under the Vagrant Act (5 Geo. 4, c. 83, s. 3); but it is *in general absolutely necessary that an information or a complaint should be laid or made to justify the issuing of a summons*, although the appearance

Necessity for
complaint or
information,
unless there
be a waiver
by defendant.

(a) (1876) 1 Ex. D. 188; 34 L. T. 139; 40 J. P. 501; 45 L. J. M. C. 78.

(b) *Post*, p. 812.

of a defendant and his answering to a charge before the magistrates without objection to the want of an information or summons may operate to cure the want of either (*R. v. Hughes*) (c).

Necessity for complaint or information, unless there be a waiver—*contd.*

An accused person may, undoubtedly, *waive* an irregularity in the proceedings and submit to the jurisdiction of the justices (*R. v. Shaw* (d); *R. v. Fletcher* (e)). But, where the defendant had been arrested under a general warrant authorizing the entry of premises used as a “gaming-house,” and was charged as a “person” who, “having the management of a room” in the house, “used it for the purpose of betting with persons resorting thereto,” the majority of the court held that the defendant was entitled to insist upon the laying of an information; and, as the justices had proceeded to adjudicate despite the defendant’s objection to the want of such information, the conviction was quashed (*Blake v. Beach*) (f). In this case the charge seems to have been stated verbally in the presence of the accused, so that proceedings should never be continued against an *unwilling defendant* without an information properly laid (cf. *R. v. Millard*) (g). But, in a recent case, a divisional court is reported to have upheld a conviction based on an information to which the defendant’s solicitor had taken objection at the outset—the information manifestly failing to disclose the elements essential to constitute the offence in respect of which the informant sought for and obtained a conviction (*R. v. Tabrum*) (h). The case of *Blake v. Beach* does not appear to have been dealt with by the learned judges. “When you get a man before the court,” said *Alverstone*, C.J., “it is not necessary to have an information at all, and the court can either amend the information or deal with the case as not requiring an information.” But this observation probably had reference to the somewhat obscure facts of the particular case and the procedure adopted on the part of the defence, for there is no express power to amend an information (*post*,

(c) (1879) 4 Q. B. D. 614; 48 L. J. M. C. 151.

(d) (1865) 34 L. J. M. C. 169; 12 L. T. 470.

(e) *Post*, p. 300.

(f) (1876) 1 Ex. D. 320; 45 L. J. M. C. 111; 40 J. P. 326.

(g) (1853) 22 L. J. M. C. 108; 6 Cox, 150.

(h) (1907) 97 L. T. 551; 71 J. P. 325; 23 T. L. R. 474.

p. 71), and the court is not reported to have questioned the authority of *Blake v. Beach*.

Death of informer does not abate proceedings.

The death of an informer does not abate proceedings of a *criminal* character; and it was held that this applied even in the case of a *complaint* under 20 & 21 Vict. c. 83, upon which a warrant to seize certain obscene books had been issued and the defendant summoned to show cause why they should not be destroyed (*R. v. Truelove*) (i). It was pointed out by *Lush, J.*, that the proceedings were “essentially criminal proceedings,” though based upon a complaint, and that, therefore, the death of the complainant created no lapse, as in the case of civil or quasi-civil proceedings. “This warrant,” said the learned judge, “is similar to an ordinary search warrant, and, in the further prosecution of the proceedings, the presence of the complainant is never necessary.” But it is submitted (contrary to the view generally accepted) that the principle of this case does not apply to the ordinary run of cases tried in a court of summary jurisdiction, even where they are of a criminal character, inasmuch as ss. 12, 14 of the Summary Jurisdiction Act, 1848 (which regulate the procedure), clearly contemplate the presence of the prosecutor or complainant and require the court to hear “such witnesses as *he* may examine and such other evidence as *he* may adduce”; while there is no provision for any other person “taking up” the prosecution.

Pp. 1005,
1006.

Requisites of informations and complaints.

P. 1003.

Need not be in writing in absence of express statutory direction.

Form 1,
p. 1092.

The rule of law is that, unless a statute requires it, the information need *not be in writing*; and it is expressly provided that a *complaint*, upon which an order for the payment of money or otherwise may be made, need not be in writing “unless it shall be required to be so by some particular Act of Parliament upon which such complaint shall be framed” (11 & 12 Vict. c. 43, s. 8). It is, however, very desirable, where process is sought against a person who is alleged to have committed an offence for which he is liable to be imprisoned, fined, or otherwise punished, that the *information* should in all cases be reduced into writing, and it is believed that this is the general practice, at any rate where a warrant is applied for in the first instance. The *complaint* or *information* is usually drawn up by the magistrates’ clerk on application at his

(i) (1880) 5 Q. B. D. 336; 49 L. J. M. C. 57; 42 L. T. 250; 44 J. P. 346; 28 W. R. 413; 14 Cox, 408.

office, together with the *summons* or *warrant*, and, in summary proceedings, it may be made or laid by the complainant or informant in person, by his counsel or solicitor, or other person authorized in that behalf (11 & 12 Vict. c. 43, s. 10: and see further, pp. 39, 71).

Forms 2, 6,
pp. 1092,
1093.

As a general rule, every complaint upon which justices are authorized to make an order, and every information for an offence punishable upon summary conviction, unless some particular Act of Parliament otherwise requires, may be made or laid *without oath* (11 & 12 Vict. c. 43, s. 10). Informations which are laid without oath are said, technically, to be *exhibited*, and should be in writing, and signed or acknowledged by the informant in the presence of the magistrate.

Need not be
on oath in all
cases.

P. 1004.

In the great majority of cases, however, the information is *required* to be laid upon oath; for not only is this requisite in proceedings under many particular Acts of Parliament, but *wherever justices issue their warrant to apprehend the defendant* it is necessary that the information should be substantiated by the oath or affirmation of the informant, or by some witness on his behalf, before the warrant can be issued (*ib.* s. 10; 11 & 12 Vict. c. 42, s. 8). In every case, therefore, where the information is not intended to be made on oath, it is the duty of the clerk to ascertain whether or not this oath is necessary, and to frame the documents accordingly.

When it
should be on
oath.

Pp. 1004, 963.

If the information is required by the particular statute under which it is laid to be made *upon oath*, the magistrate (after reading the document over to the informant or satisfying himself that its contents are properly understood by him) should cause him to take a Testament in his uplifted hand, while the magistrate taking the information should cause the informant to say, or repeat after him, the following form of oath:—

Administra-
tion of oath.
See now the
OATHS ACT,
1909, *post*,
p. 55.

“I, A.B., swear by Almighty God that the contents of this information, signed by me, are true and correct to the best of my knowledge and belief.”

As to the course to be adopted where the informant desires to affirm, &c., see *post*, p. 84.

Affirmation.

It must always be remembered that an *oath* or affirmation is absolutely necessary when, instead of a summons to secure the appearance of the defendant, a *warrant* for his arrest is issued.

How laid
when infor-
mant did not
see offence
committed.

Assaults and other offences may sometimes be committed in such circumstances that the *party injured* was unable to see the offence committed, or to identify the person who committed it. In such cases, if the information be laid under an Act of Parliament which requires the oath of a credible witness before the summons or warrant is issued, it would be advisable for the complainant to lay the information without oath as an exhibit, and for a short deposition of a credible witness who can swear to the facts (so as to satisfy the terms of the statute) to be endorsed upon, or appended to, the information, as the magistrate's justification for issuing process against the defendant (cf. *R. v. Scotton*) (*k*).

Within what
time com-
plaint or in-
formation
may be made
or laid.

Complaints or informations before justices of the peace, under modern Acts of Parliament, are in many instances required to be laid within a certain time after the commission of the offence, but where no time is specially limited for laying the information, it must, in case of proceedings *not relating to an indictable offence*, be laid within *six calendar months* from the time when the matter of such information or complaint arose (11 & 12 Vict. c. 43, s. 11). A district rate being amended, after a successful appeal against the valuation list, time runs from the demand of the *reduced* amount, not from the original demand (*Keeton v. Sheffield Coal Co.*) (*l*).

P. 1004.

It will be seen hereafter that, even as to *indictable* offences, there are a few instances in which a special limitation is prescribed by statute. Thus, in the case of NIGHT POACHING, *post*, p. 497; RIOT, p. 878; Offences relating to the Registration of BIRTHS AND DEATHS, p. 336; the CUSTOMS, p. 405; and the CRIMINAL LAW AMENDMENT ACT, p. 366.

In computing the time within which the complaint or information must be made or laid, the day on which the act was done, or the particular day from which the time is to be reckoned, is to be excluded, and the day on which the proceedings were commenced is to be included in the time allowed (*Isaacs v. Royal Insurance Co.* (*m*); *Radcliffe v. Bartholomew* (*n*)).

(*k*) (1844) 13 L. J. M. C. 58.

(*l*) [1901] 2 K. B. 26; 70 L. J. K. B. 374; 65 J. P. 341.

(*m*) (1870) 39 L. J. Ex. 189; 22 L. T. 681.

(*n*) [1892] 1 Q. B. 161; 61 L. J. M. C. 63; 65 L. T. 677; 40 W. R. 63; 56 J. P. 262.

In some cases the offence is of a *continuing* nature, thus preventing the limitation of time being operative from the commencement of the wrongful act; but, although an offence were "continuing," the conviction would, as a rule, be bad if *penalties* were assessed in respect of dates extending more than six months prior to the laying of the information (*R. v. Stale*; *Ex parte Saunders*) (o). Under s. 158 of the Public Health Act, 1875 (*post*, p. 857), penalties as for a "continuing offence" (in respect of the existence of works constructed in contravention of a bye-law) may be recovered upon an information which does not charge the continuing offence (*Airey v. Smith*) (p). As an illustration of "continuing" offences, it may be mentioned that maintaining a temporary wooden structure which had been erected without licence contrary to the Metropolitan Management Act, 1882, s. 13, was held to be such an offence (*Metropolitan Board of Works v. Anthony* (q); and cf. *R. v. Cluer* (r)). But, where a bye-law prohibited the execution of works unless the approval of the plans by the local authority were secured, it was held that the time limited for proceedings began to run, at any rate, not later than the completion of the works (*Reay v. Mayor, &c., of Gateshead*) (s); and, on an information under s. 73 (viii.) of the London Building Act, 1894, which prescribes, subject to certain exceptions, that "no projection from any building shall extend beyond the general line of buildings in any street," without the consent of the county council, it was held that an offence was committed on the date when a projecting sign was completely affixed to the building (*Hull v. London County Council*) (t). In a later case, the default alleged was a failure to comply with requisitions which were found to be reasonable: and not conforming with one of these requirements was put by the particular statute on the same footing as disobedience to an order. "I doubt," said *Alverstone*, C.J., "whether

"Continuing"
offence.

(o) [1895] 2 Q. B. 247; 64 L. J. M. C. 232; 73 L. T. 343; 18 Cox, 176; 59 J. P. 471.

(p) [1907] 2 K. B. 273; 76 L. J. K. B. 766; 96 L. T. 691; 71 J. P. 285.

(q) (1885) 54 L. J. M. C. 39; 49 J. P. 229.

(r) (1898) 67 L. J. Q. B. 36; 77 L. T. 439.

(s) (1889) 55 L. T. 92; 50 J. P. 805.

(t) [1901] 1 Q. B. 580; 70 L. J. K. B. 364; 84 L. T. 160; 65 J. P. 309.

the time of limitation can be said to begin to run where persons are continuing to disobey an order which is always operative until it is disobeyed" (*Chepstow Electric Light and Power Co. v. Chepstow Gas and Coke Consumers Co.*) (u). Distinguishing the earlier case, *Ridley, J.*, said: "In *Hull's Case* the offence was complete when the projection was extended. In this case it seems to me impossible to say that it is complete at any particular moment, for it continues to exist from day to day." And see CHILDREN, *post*, p. 381; FRIENDLY SOCIETIES, p. 492; HUSBAND AND WIFE, p. 548; and MILITARY, p. 725.

Special statutory limitations.

39 & 40 Vict.
c. 61, s. 19.

It may be noticed that to constitute the offence of deserting a wife or children whereby she or they become chargeable, the chargeability consequent upon the desertion is necessary to complete the offence, therefore the time for laying the information runs from the chargeability, and an application for process was held to be in time though more than six months had elapsed since the desertion. And, now, the proceedings may be begun within two years from the date of chargeability, or from the desertion if chargeability already existed (*post*, p. 927).

Again, the Vaccination Acts, 1867, 1871, require the complaint to be made at a time not exceeding *twelve months* from the time when the matter of complaint arose, and not subsequently, so that an application for an order to vaccinate may be made within twelve months from the expiration of the time within which the parent was required by the notice to cause the child to be vaccinated (*Knight v. Halliwell*) (x).

Other statutory limitations are hereafter specifically referred to, see, *e.g.*, ANIMALS (CRUELTY TO), p. 253; ALIENS ACT, 1905, p. 245; ADULTERATION OF SEEDS, p. 241; BREAD ACTS, p. 342; SPECIAL CONSTABLES, p. 892; EMPLOYMENT OF CHILDREN ACT, 1903, p. 369; FACTORY ACTS, p. 455; FERTILIZERS, &c., ACT, p. 470; FOOD AND DRUGS ACTS, p. 218; GAME ACTS, p. 498; MERCHANDISE MARKS ACTS, p. 719; MILITARY (RESERVE FORCES, &c.), p. 725.

Who may lay the information or make the complaint.

Anyone may lay an information for a public offence, unless the statute under which the proceedings are taken

(u) [1905] 1 K. B. 198; 74 L. J. K. B. 28; 69 J. P. 72.

(x) (1874) L. R. 9 Q. B. 412; 43 L. J. M. C. 113.

limits the class of informants; but, apart from any particular statute, the party injured should in general be the person to go before the magistrate and make the complaint or lay the information. Where, however, an offence is created and a penalty attached to it, anyone may, *prima facie*, initiate the prosecution—at any rate, if the offence is one against public policy. Thus, *e.g.*, under the Public Health (London) Act, 1891, the preliminary steps as to the inspection, examination and seizure of meat suspected of unsoundness must be taken—if taken at all—by certain public officials only. Yet it was held that an information, charging the defendant with having on his premises, for the purpose of sale, unsound meat intended for the food of man, might well be laid by a private individual (*Griebler v. Manning*) (*y*). So, too, in the case of an information against a costermonger under the Metropolitan Police Act, 1839 (2 & 3 Vict. c. 47, s. 60 (vii.)), for obstructing a highway (*Allman v. Harcastle*) (*z*). Reference may also be made to *Worthington v. Kyme* (*a*), where an information under s. 6 of the Sale of Food and Drugs Act, 1875, had been laid by A. B., “inspector of nuisances for the borough of C.” Objection was taken (but unsuccessfully), on the ground, apparently, that C., not being a borough authorized to appoint an analyst, was not a “local authority” empowered to direct prosecutions under the Act. In summary proceedings, the information may be made or laid by the counsel or solicitor of the complainant or informant, or by any person authorized in his behalf (11 & 12 Vict. c. 43, s. 10). And it must be observed that, even although a statute may direct that the information shall be laid by a particular person, as, *e.g.*, an inspector of mines, yet such person need not necessarily attend in person to lay the information if he appoints a duly authorized agent to act on his behalf in the matter (*Foster v. Fyfe*) (*b*). Where a public official, as, *e.g.*, an inspector of weights and measures, is empowered to prosecute, *with the consent of the local authority*, a separate consent to each

Who may lay information or make complaint.

Information laid by agent.

P. 1004.

(*y*) [1906] 1 K. B. 709; 75 L. J. K. B. 463; 70 J. P. 181.

(*z*) (1903) 89 L. T. 553; 67 J. P. 440.

(*a*) (1905) 93 L. T. 546; 69 J. P. 390.

(*b*) [1896] 2 Q. B. 104; 74 L. T. 784; 60 J. P. 423; 41 W. R.

Information
by "party
aggrieved."

prosecution is not necessary: a *general* authority to prosecute will suffice (*Tyler v. Ferris*) (c). So also a vaccination officer has authority to institute proceedings to obtain orders to vaccinate without a special authority in each case (see VACCINATION, *post*, p. 919).

Where the statute gives magistrates jurisdiction to adjudicate upon complaint by or on behalf of the *party aggrieved*, as is the case under 24 & 25 Vict. c. 100, s. 42 (which refers to charges of common assault), the person aggrieved, or someone on his behalf, must lay the information (cf. *post*, p. 278). So, too, where the information is for the recovery of a penalty or compensation which is given to the *party aggrieved*. But it has been said that this is so only where the penalty is given to particular persons or bodies for the protection of their *private rights*; and that, where the enactment imposing the penalty is in respect of an *offence against public decency and propriety*, such as the keeping open of a house for supplying refreshments to prostitutes, anyone who chooses may lay the information, notwithstanding that by a special Act the penalty must be awarded to be paid to one of two particular bodies (*Cole v. Coulton*) (d). It has, moreover, been held that a bye-law which limited the number of persons who might be carried on a tramcar, being framed in the public interest, could be enforced summarily by any member of the public (*Badcock v. Sankey*) (e). And as to informations laid under the Diseases of Animals Act, 1894, see *R. v. Stewart* (f).

Where the section creating an offence leaves it open to anyone to lay the information, the power to do so is *not limited* to the party aggrieved by an enactment that, on conviction, the justice may discharge the offender from his conviction, upon his *making satisfaction to the party aggrieved* for damages and costs, or that, after conviction, the defendant shall be *released from all further or other proceedings for the same cause*; so that an information for stealing or cutting a tree, under 24 & 25 Vict. c. 96, s. 33, may be laid by a person other than the party aggrieved; while under the Game Act, 1 & 2 Will. 4, c. 32,

(c) [1906] 75 L. J. K. B. 142; 70 J. P. 88.

(d) (1860) 29 L. J. M. C. 125.

(e) (1890) 54 J. P. 564.

(f) *Post*, p. 264.

a complaint as to the commission of a trespass in search of game may be made by any person (cf. *Tarry v. Newman* (g); *Middleton v. Gale* (h)).

As to prosecutions under the Coal Mines Regulation Act, 1887, see 50 & 51 Vict. c. 58, s. 65; and as to cases under the Public Health Act, cf. *post*, p. 804, the Dangerous Performances Act, *post*, p. 370, and the Lord's Day Observance Act, *post*, p. 894. As to the power of a water-bailiff under the Fisheries Acts to prosecute without express authority from the Board of Conservators, see 54 & 55 Vict. c. 37, s. 13, and *Pollock v. Moses* (i).

In the case of *Allman v. Hardcastle* (j), the informant issued the process, in terms, as an "inspector of streets" and "on behalf of the Southwark Borough Council." The prosecution was, in fact, instituted on the instructions and by the order of the council. An objection being taken to the council acting as prosecutors, it was held that the words "on behalf of the Southwark Borough Council" were "absolutely unnecessary" and could be treated as surplusage and the "inspector of streets" treated as a private individual. So, again, in *Giebler v. Manning* (k), it was the duty of the sanitary inspector to take legal proceedings for offences under the Act, subject to the direction of the authority, and there were provisions as to the mode of authorizing an officer to take proceedings. The information was laid, and the summons issued, by the inspector "on behalf of the Fulham Borough Council," though he had not, in fact, received any express authority to commence proceedings. It was held, following *Allman v. Hardcastle*, that the information might be treated as laid by a private individual; but see the remarks of *Darling* and *Bray*, JJ., in the J. P. report (l).

The Summary Jurisdiction Act, 1848 (s. 1), provides that no objection may be taken or allowed to any information, complaint, or summons for any alleged defect therein in substance or in form; and, as we shall see

Doctrine of "surplusage" applied to description of informants.

Contents of informations, summonses, &c.

P. 998.

(g) (1846) 15 M. & W. 645; 15 L. J. M. C. 160.

(h) (1838) 8 A. & E. 155.

(i) (1894) 63 L. J. M. C. 116; 70 L. T. 378; 58 J. P. 527.

(j) *Ante*, p. 37.

(k) *Ante*, p. 37.

(l) 70 J. P. 181.

Contents of
information.
&c.—*contd.*

later (*post*, p. 77), variances as to time and place are in certain cases not to be “deemed material.” Yet, though the record of the conviction no longer recites the complaint or information, inasmuch as the jurisdiction given to justices to adjudicate summarily is a special one, and as the information or complaint may still be examined in order to ascertain what is the charge upon which the judgment proceeded, and whether the conditions precedent (if any) imposed by the statute giving the jurisdiction have been complied with, the information should still contain an exact description or statement of the offence. It need not, however, state the offence in the language of the statute if it states sufficient facts to bring the case within the statute. The name of the complainant or informant should appear as well as that of the proposed defendant; and the complaint or information should state, also, the place where, and the date on which, it was made or laid, in order to show that it was, in fact, made or laid under circumstances and within the time prescribed by law for the making or laying of the same. The place at which the alleged offence was committed should be disclosed, and the date of its alleged commission should be specified. Indeed, whenever the hour of committing an act is made an ingredient of the offence, the time should be stated with precision.

Forms,
pp. 1092, 1220.

Exceptions,
&c., need not
be negatived.

“Any exception, exemption, proviso, excuse, or qualification,” whether it does or does not accompany the description of the offence in the same section, need not be specified or negatived in the information or complaint. And, even if any such exception, &c., be “specified or negatived,” no proof in relation thereto can be required of the informant or complainant (42 & 43 Vict. c. 49, s. 39 (ii.)).

P. 1047.

As to the description of the property of partners and public officers, or the ownership of materials for the repair of highways, &c., see 11 & 12 Vict. c. 43, s. 4 (*post*, p. 1001). The information or complaint must be for *one* offence or matter of complaint only (*ib.* s. 10); and, as to the consequences of *duplicity*, and other *defects*, see *post*, p. 70. But cf. CHILDREN ACT, *post*, p. 380.

P. 1004.

Cf. *post*,
p. 804.

As to the inclusion of “several sums” in a process under the Public Health Acts, see 53 & 54 Vict. c. 59, s. 8.

Summons or Warrant.

Unless the person charged be already in custody, the next step is to procure his attendance at the hearing, and with this object the magistrate, before whom the complaint or information was made or laid, will cause the defendant to be brought before the court by means of a summons or a warrant. As has been already observed (p. 24), the justice is entitled to exercise a discretion in regard to the granting or withholding of a summons or warrant, and the preliminary inquiry as to whether a charge is to go further is as much a judicial transaction as the hearing itself would be. If upon the facts as stated by the complainant or informant it is obvious that the applicant has no right to prefer the charge, or that it is vexatious or idle and trumpery, or that further proceedings would be altogether nugatory, the magistrate may decline to take cognizance of the matter; as, *e.g.*, where an application was made against a Jewish baker (who supplied a Jewish community and closed his shop on Saturday) in respect of an alleged offence against a "Lord's Day observance" clause in a local Bread Act. The magistrate refused the application on the ground that, if he had been applied to for the necessary consent to prosecute under the general Lord's Day Act, he would have refused such consent. It was held that he was entitled to take into consideration that there were other methods of procedure more applicable to the particular class of offence, and, also, that he might, in deciding whether to issue the summons, take into account such matters as he would consider in determining it (*R. v. Bros*) (*m*). But, in a recent case, an applicant, having obtained a warrant for libel, failed, through some misunderstanding, to appear in support of the charge on the arrest of the accused. The prisoner was, accordingly, discharged from custody, and a few days later the applicant applied for a summons with a view to re-opening the matter. It was held that, upon the above facts, though coupled with the consideration that the informant had a civil remedy, the magistrate had not exercised a judicial discretion in refusing the application for process by way of summons (*R. v. Bennett and Bond*) (*n*).

Issue of summons or warrant.

Forms,
pp. 982, 1092.

(*m*) (1901) 18 T. L. R. 39; 66 J. P. 54.

(*n*) (1908) 72 J. P. 269.

Issue of summons or warrant—*contd.*

If the justice determines to grant process, he must then consider whether to issue *a summons* or *a warrant*. So far as regards offences which fall within the cognizance of a court of summary jurisdiction, a summons should usually be issued in the first instance, and, if that be disregarded or disobeyed, a warrant may be resorted to. There are, of course, many cases in which it would be proper to issue a warrant in lieu of a summons:—*e.g.*, if the justice is satisfied that, in the event of the issue of a summons, the accused would probably abscond. On the other hand, there are many cases in which it would be most oppressive to issue a warrant in the first instance:—*e.g.*, if this were done on the mere suggestion that the prosecution would have a difficulty in proving their case should a summons only issue (per *Alverstone*, C.J. [1909], 2 K. B. at p. 617). Moreover, a warrant cannot under any circumstances be issued on failure of appearance to answer a complaint for non-payment of money claimed to be due (42 & 43 Vict. c. 49, s. 35). A *warrant in the first instance* can issue on informations only and not on complaints; and, as has been before pointed out (p. 33), it is indispensable that the information should be verified on oath before such warrant can issue. It may be stated generally that, if a summons will be likely to prove effectual, a warrant should not be granted unless the charge is of a very serious nature (*O'Brien v. Brabner*) (o). But, so far as *indictable* offences are concerned, it must be noted that there is nothing to prevent the issue of a *warrant in the first instance* “at any time BEFORE or after the time mentioned in the summons for the appearance of the accused party” (11 & 12 Vict. c. 42, s. 1).

P. 960.

Summons.

Forms,

pp. 982, 1092.

“The office of a *summons* is to inform the party to be charged of the offence which he has to meet, and when he has to meet it, and to require his attendance” (per *Field*, J., in *Blake v. Beach*) (p). The summons, then, if issued, must contain a concise statement of the charge, coupled with an order requiring the person named to appear at a certain time and place to answer the same (see Paley on “Summary Convictions,” 8th edit. p. 100). As to signature by “rubber stamp,” cf. *Bennett v. Brumfitt* (pp).

(o) (1885) 49 J. P. 227.

(p) (1876) 1 Ex. D. at p. 330.

(pp) (1867) 37 L. J. C. P. 25.

In proceedings under the Food and Drugs Acts, it is expressly provided that the name of the prosecutor must be stated in the summons (*post*, p. 217).

Process must be granted by the justice before whom the information or complaint was laid (cf. *Dixon v. Wells* (q) and *R. v. Pickford* (r)); but the warrant or summons will not be avoided by reason of the justice who signed it dying or ceasing to hold office (42 & 43 Vict. c. 49, s. 37).

Death, &c.,
of justice.

P. 1046.

The summons may be served upon the defendant either by delivering it to him *personally*, or by leaving it for him *with some person* at his last or most usual place of abode (11 & 12 Vict. c. 42, s. 9; c. 43, s. 1). It should, of course, be handed to a person likely to give it to the defendant; and it has been said that, if the service be otherwise than personal, the nature of the summons must be explained to the person with whom it is left (*R. v. Smith*) (s). The summons is often issued in duplicate, and service effected by delivering a *duplicate* personally or leaving it at the last or most usual place of abode of the defendant. It is for the justices to decide whether the service took place at a reasonable time before the hearing. In some few instances a minimum period is prescribed by statute (see also *post*, pp. 57, 58).

Service of
summons.

Pp. 964, 997.

In *indictable* cases the summons must be served by a constable or peace officer (11 & 12 Vict. c. 42, s. 9); and, in some cases falling within the Summary Jurisdiction Acts, there are special provisions as to service. For example, under the Army Act (*post*, p. 301); the Bastardy Acts (*post*, p. 299); the Employers and Workmen Act, 1875 (*post*, p. 447); the Factory Act, (*post*, p. 456); the Food and Drugs Acts (*post*, p. 217); the Friendly Societies Acts (*post*, p. 493); the Recovery of Poor Rate (*post*, p. 778); the Sea Fisheries Acts, 1883; the Mail Ships Act, 1891; and the London Building Act, 1896 (cf. *R. v. Mead*) (t).

P. 964.

A summons may be served on a *Railway Company* by leaving it at the principal office of the company, or at one

(q) *Post*, p. 79.

(r) *Post*, p. 299.

(s) (1875) L. R. 10 Q. B. 604; 33 L. T. 394; 39 J. P. 613.

(t) [1898] 1 Q. B. 110; 66 L. J. Q. B. 874; 61 J. P. 759.

Service of
summons—
contd.

of the principal offices when there is more than one; or by personal service on the secretary, or, if there be no secretary, on a director. Service at the office may be effected by transmitting the summons or notice through the post (8 & 9 Vict. c. 20, s. 138). So in the case of an *incorporated company* (8 & 9 Vict. c. 16, s. 135).

A summons may be served on a *limited company* by leaving the same, or sending it through the post in a prepaid letter addressed to the company, at the registered office (8 Edw. 7, c. 69, s. 116). The summons must be posted in time for delivery in due course within the period (if any) prescribed for service; and, in proving service, it is sufficient that the document was properly directed and put, as a prepaid letter, into the post office (*cf. post*, pp. 1069, 1070).

Leaving the summons with an assistant at a shop occupied by the defendants, a limited company, is not a regular or sufficient service (*Pearks, Gunston and Tec, Ltd. v. Richardson*) (*u*).

The summons may be served in any part of England or Wales; or (after indorsement) in Scotland (*post*, p. 53), if it be issued under the Summary Jurisdiction Acts, but not otherwise (*cf. Berkeley v. Thompson*) (*x*); *post*, p. 1060.

As to the meaning of *service by post* in statutes passed after January 1st, 1890, see 52 & 53 Vict. c. 63, s. 26 (*post*, p. 1069).

Execution of Warrant.

Backing
warrants.

Form, p. 982.

Pp. 966 *et seq.*

Form, p. 985.

A **warrant of arrest** is an order to the constable, or other persons to whom it is addressed, to apprehend the person wanted, and bring him before the justices to answer the charge. An English warrant for an indictable offence may be sent for execution to any place in the United Kingdom; but as its execution implies the use of force, when necessary, it is of no avail, beyond the jurisdiction of the justice granting it, without the assent of some justice answerable for the King's peace in the locality where it is to be executed. This is evidenced by his indorsing, or as it is technically termed "backing," the warrant (11 & 12 Vict. c. 42, ss. 11—15). If any

(*u*) [1902] 1 K. B. 91; 71 L. J. K. B. 18; 50 W. R. 286; 66 J. P. 119.

(*x*) Cited *post*, p. 54.

witnesses for the prosecution happen to be in the place where the warrant is backed, the accused may (by *special direction* of the justice who backed the warrant) be brought before such justice, or some other justice of the same county or place, who will deal with the matter under s. 22, as explained *post*, p. 132. The formality of backing may be dispensed with in cases of "fresh pursuit," *i.e.*, where the object of the warrant is pursued direct into some adjoining county, and arrested within seven miles of the frontier, measured as the crow flies (11 & 12 Vict. c. 42, s. 10; *R. v. Saffron Walden*) (*y*). "Fresh pursuit."

P. 965.

The Summary Jurisdiction Act, 1848, provides (s. 2) for the issue of warrants in *summary* matters; and, by the same Act (s. 3), the various provisions as to "fresh pursuit" and the "backing" of warrants in *indictable* cases are extended to warrants of *apprehension* and *commitment* issued in respect of any matter which may be dealt with *summarily* (11 & 12 Vict. c. 43, ss. 2, 3, 37).

Pp. 998, 1017.

The "backing" of warrants of *distress* is provided for by s. 19 of the same Act (*post*, p. 1009). As to the Recovery of Poor Rates, see *post*, p. 782.

As to the execution of warrants issued by *borough* justices and *metropolitan* police magistrates, see *ante*, p. 5.

It may be added that a magistrate would seem to be entitled to *withdraw* his own warrant; it is, in effect, merely an order given by him which it is open to him to countermand at any time before it has been actually executed. It would seem, too, that a *mandamus* would issue directing a magistrate to withdraw a warrant if it clearly appeared that it had been granted without jurisdiction (*R. v. Crossman*) (*z*).

Withdrawal of warrant.

As to the execution of warrants on *Sunday*, see *post*, pp. 46, 895.

Provision is also made for the apprehension of a person against whom an *indictment* has been found. On production of a certificate by the clerk of indictments, or clerk of the peace, a warrant may be issued by a justice of the place where the offence was committed, or of the place where the alleged offender is suspected to reside or be. As to where the application should properly be made,

Warrant to apprehend person against whom *indictment* has been found.

Form, p. 984.

(*y*) (1846) 9 Q. B. 76; 15 L. J. M. C. 115.

(*z*) (1908) 72 J. P. 250; 98 L. T. 760; 21 Cox 605; 24 T. L. R. 517.

cf. *Ex parte Lloyd* (a). On his identity being established, the accused will be committed for trial or admitted to bail. If, however, the accused be already in prison, the warrant Form, p. 985. will be addressed to the gaoler, who will be directed to detain the accused until he be removed by *habeas corpus* P. 961. or otherwise discharged (11 & 12 Vict. c. 42, s. 3).

Apprehension under Warrant.

Apprehension
under
warrant.

As to *apprehension under warrant*, it is essential, in cases of misdemeanour at least, that the officer charged to execute it should have the warrant actually in his possession (properly "backed" if necessary), as otherwise the accused, not being "found offending," is under no obligation to surrender, and would, in many cases, be entitled to maintain an action for false imprisonment against the officer (*Codd v. Cabe*) (b).

Where the charge is one of *felony*, he would no doubt resist at his peril; but, even then, the constable would be indebted for protection, not to his forgotten warrant, but to his antecedent authority at common law.

It is not necessary that the person arrested should be actually touched or seized, provided he distinctly submits and considers himself in custody. Care should, however, be taken that the arrest is complete in this respect, in case of subsequent escape.

A constable may break open house-doors and, *a fortiori*, all inner ones in the performance of this part of his duty, at all events where the charge is one of felony, or of a misdemeanour involving breach of the peace. But he should first demand admission in any case (certainly where the offence is only a misdemeanour), stating the nature of his errand. It seems doubtful, however, whether the doors of a stranger may be forced, upon the mere ground of the offender being within, unless the latter be an actual inmate or resident in the house.

Apprehension
on Sunday.
P. 962.

A warrant for the apprehension of a person charged with any *indictable* offence may be issued on a Sunday (11 & 12 Vict. c. 42, s. 4), and it would seem to follow that it may also be *executed* on that day. Indeed, even before this statute, it was held that a warrant might be executed

(a) (1889) 53 J. P. 612.

(b) (1876) 1 Ex. D. 352; 45 L. J. M. C. 101; 34 L. T. 453; 40 J. P. 566.

on Sunday in cases of treason, felony, or breach of the peace, whether actual or constructive (see further, SUNDAY, *post*, p. 895). An apprehension under warrant may no doubt be made in the night, but the entering of a house, at such a time, for this purpose is open to grave and obvious objections, and should not be resorted to in ordinary circumstances.

Arrest (without Warrant) under Statutory Powers.

By certain statutes persons FOUND COMMITTING offences may be arrested at once. In such cases, of course, the necessity for a summons or warrant of apprehension is got rid of. A few of the statutes of most general application will be here referred to, though it must be borne in mind that there are other statutes authorizing a similar course.

Persons found committing or about to commit offences.

Thus, any person found committing an offence under the Larceny Act (except only the offence of angling in the daytime) may be immediately apprehended without warrant by any person (24 & 25 Vict. c. 96, s. 103). So, too, if property is offered for sale or by way of pledge to any person who has reason to suppose that the property is stolen, he is empowered, and, indeed, required, if possible, to apprehend the party offering the same, together with such property (*ib.*).

Under the Malicious Injuries to Property Act (24 & 25 Vict. c. 97, s. 61), a peace officer, the owner of property injured, or his servant or other authorized person, may, without warrant, apprehend persons found committing offences under that Act; while anyone may apprehend persons found committing offences against the Coinage Act (24 & 25 Vict. c. 99, s. 31).

Again, by the provisions of the Vagrant Act (5 Geo. 4, c. 83, ss. 6, 11) any person "found offending" against that Act may be apprehended without warrant and delivered to a constable, who would become obnoxious to a penalty of 5*l.* if he refused to take the offender into custody. This provision, however, is only applicable to those offences which are apparent to the eye, and does not apply, *e.g.*, to the case of a man neglecting to support his family (see *Horley v. Rogers*) (*c.*).

Arrest under
statutory
powers—
contd.

So, too, a constable upon view, or even upon the information of another person who declares his name and abode, may apprehend without warrant an offender under the Act for the Prevention of Cruelty to Animals (12 & 13 Vict. c. 92, s. 13). And as to persons travelling on a railway who will neither produce a ticket, pay the fare, nor give name and address, see *post*, p. 864.

Again, persons detected in the act of offending against certain provisions of the Game Laws may be apprehended by the owners or occupiers of the land on which the offence is committed, or by the gamekeepers or servants of such owners or occupiers (9 Geo. 4, c. 69, s. 2; *post*, p. 497). So, too, drivers or riders found committing certain offences against s. 78 of the General Highway Act, 1835, may be apprehended by anyone who sees the offence committed (*post*, pp. 420, 536); and *constables* may apprehend persons found committing offences against s. 28 of the Town Police Clauses Act (*post*, p. 772).

Offences
during the
night.

Borough constables may arrest idle or disorderly persons disturbing the peace, or persons suspected of an intention to commit felony (45 & 46 Vict. c. 50, s. 193); and there is, moreover, power conferred upon everyone, whether a constable or a private individual, to apprehend without warrant any person *found committing any INDICTABLE offence between the hours of 9 P.M. and 6 A.M.* (14 & 15 Vict. c. 19, s. 11). And a *constable* may take into custody without warrant any person whom he may find lying or loitering in any "highway, yard, or other place" *between those hours* if he has good cause to suspect such person of having committed or *being about to commit any felony* against certain of the Criminal Law Consolidation Acts of 1861, *i.e.*, the Larceny Act, the Malicious Injuries to Property Act, or the Offences against the Person Act.

Meaning of
"found
committing."

In cases where the statute provides that a person may be apprehended if he be "found committing" an offence, this must be understood as confined to occasions on which the offender is found in the actual commission of the crime and is forthwith seized or pursued: it is insufficient to justify apprehension that the offence has been committed very recently (*Griffiths v. Taylor*) (*d*). Two

or three hours' interval between discovery and pursuit has been held to be too long to justify apprehension on a charge of obtaining property by false pretences (*Downing v. Capel* (e); and see *Leete v. Hart* (f) and *R. v. Walker* (g)).

Arrest apart from Statutes.

Apart from statute, there is generally no power to apprehend in the first instance and without warrant for a MISDEMEANOUR, though a constable, or, indeed, any private individual, may apprehend for the purpose of quelling a breach of the peace; and a constable may clearly apprehend upon the spot for any assault *which he has himself witnessed*, whether or no there be any danger of further violence. If he did not witness the assault, he could not justify an arrest unless he had good reason to anticipate a continuance of the disturbance.

In cases of
misde-
meanour.

With regard to FELONIES, the rule of the common law as to arrest without warrant is very different, and may be thus stated:

In cases of
felony.

When a felony has actually been committed, and a *private individual* has subsequently good reason to suppose that a particular person was the offender, he may lawfully apprehend the suspected person; and such apprehension will be good to all intents and purposes, even if the party turn out to be perfectly innocent. But the private individual is under no obligation to take this step; and anyone who acts as his own constable, unless with substantial reason, incurs very serious risk. A *police officer* enjoys the further latitude of being allowed to apprehend a suspected person, not only when it is quite certain that a felony has been committed, but when he has merely good reason to think that such is the case; see the decision in *Creagh v. Gamble* (h), where it was held that knowledge by the police that a warrant has been issued for the arrest of a particular person for felony constitutes a ground of reasonable suspicion that a felony has been committed by him. Such "reasonable

(e) (1867) L. R. 2 C. P. 461; 36 L. J. M. C. 97.

(f) (1869) 32 J. P. 407.

(g) (1854) 23 L. J. M. C. 123.

(h) (1890) 24 L. R. Ir. 458; 38 W. R. Digest, 80.

suspicion" would be sufficient to justify an apprehension and charge before a magistrate, and a granting by such magistrate of a reasonable remand until the arrival of the warrant and its backing by the proper authorities.

Breaches of
the peace.

If a magistrate sees a felony or a misdemeanour, *which involves a breach of the peace*, being committed, he may, by word of mouth, command a bystander to apprehend the offender, or personally apprehend him. But if the magistrate be not himself present, or if time be allowed to elapse between the offence and the apprehension, a warrant should be issued (2 Hale, P. C. 86). It seems that a justice would not be justified in either personally apprehending or authorizing a bystander to apprehend a person whom he saw committing some misdemeanour not involving a breach of the peace, unless this course were specially authorized by Act of Parliament, or unless the apprehension were necessary to prevent a repetition of the offence (see *King v. Poe* (i); *Fox v. Gaunt* (k)).

Sunday.

Any arrest which may be made without warrant may be effected on a Sunday as well as on any other day.

In the metro-
polis.

Special powers of arrest are conferred upon the police of the metropolitan district (see 2 & 3 Vict. c. 47, ss. 26—34, 38, 47, 50, 54, 60—66; 27 & 28 Vict. c. 55, s. 1; 30 & 31 Vict. c. 134, s. 23).

As to the
mode of
effecting
arrest.

A constable, upon being refused admission, is justified in breaking open house-doors to arrest a *felon*, even where he is acting upon suspicion only; but a private individual, seeking to exercise his power of arrest, has no such privilege, and, where an arrest is sought to be made *without warrant* in the case of a *misdemeanour*, even a constable would seem to have no right to break open an outer door, unless, indeed, the offender has been actually arrested and has made his escape (cf. *Harvey v. Harvey*) (l). A constable has no right to handcuff a person apprehended on suspicion of felony, nor any person in custody, unless this precaution is obviously called for under the circumstances to restrain the prisoner from violence or to prevent his escape (*Wright*

(i) (1867) 30 J. P. 678.

(k) (1832) 3 B. & Ad. 798.

(l) (1884) 26 Ch. D. 644; 51 L. T. 508; 48 J. P. 468.

v. *Court* (m); *R. v. Taylor* (n). The right of search is not expressly given by any enactment of *general* application; but it is universally admitted and acted upon as a precaution warranted, *under certain circumstances*, by the common law and recognized by various statutes.

Cf. *post*,
p. 197.

Anyone may interfere to prevent an illegal arrest; but it is, at the common law, an indictable offence to decline to assist a constable when in difficulties with anyone in his lawful custody. See *R. v. Brown* (o), where a person was indicted for refusing to aid a constable in quelling a prize-fight; and *R. v. Sherlock* (p).

Refusing to
assist con-
stable or
rescuing
prisoner.

Rescuing a prisoner from proper custody is of course a still graver misdemeanour. If he be in charge of a private individual, the latter should warn an attempting rescuer of the cause for which he holds his prisoner. In the case of a police constable, all persons interfere at their peril. If the constable be in plain clothes, he should show his staff, which has been held to be sufficient notice of his authority; and in *R. v. Forbes* (q) (before the Recorder of London), the defendant was convicted of assaulting two police officers in plain clothes, despite his contention that he was not aware that the men were in fact constables; and see *R. v. Maxwell* (qq). All persons are bound to submit to legal arrest, and a constable's right to secure and retain his prisoner extends to killing a felon in self-defence, or even, it is said, if necessary to prevent his escape; but the officer certainly would not be justified in proceeding to such an extremity in the case of a mere misdemeanant.

Rescue of
prisoner.

The Summary Jurisdiction Act, 1879, s. 38, enacts that a person taken into custody for any offence, indictable or otherwise, *without a warrant* shall be brought before a court of summary jurisdiction as soon as practicable after he is so taken into custody; and if it is not or will not be practicable to bring him before a court of summary jurisdiction *within twenty-four hours* after he is so taken into custody, a superintendent or inspector of

Bail of per-
sons appre-
hended
without
warrant.

(m) (1825) 4 B. & C. 596.

(n) (1896) 59 J. P. 393.

(o) (1841) 1 Car. & Mar. 314.

(p) (1866) 10 Cox, C. C. 170; L. R. 1 C. C. R. 20.

(q) (1865) 10 Cox, C. C. 382.

(qq) (1909) 73 J. P. 176.

Bail of
persons
apprehended
without
warrant—
contd.

Form 36,
p. 1110.

P. 1046.

police, or other officer of police of equal or superior rank, or in charge of any police station, shall inquire into the case, and, except where the offence appears to such superintendent, inspector, or officer to be of a *serious nature*, shall discharge the prisoner, upon his entering into a recognizance, with or without sureties, for a reasonable amount, to appear before some court of summary jurisdiction at the day, time, and place named in the recognizance (42 & 43 Vict. c. 49, s. 38). As to the necessity for a *remand* in certain cases, where the court before which the accused is brought is not itself a petty sessional court, see *post*, p. 125.

Bail for appearance *within two days* may be accepted by a *borough* constable where a person charged with a "petty misdemeanour" is arrested without warrant and "brought into the custody of the constable during his attendance in a watchhouse in the borough," at a time when the court is not sitting (see 45 & 46 Vict. c. 50, s. 227). This recognizance will be taken without fee. But nothing contained in the section last cited is to be taken to have repealed s. 38 of the Summary Jurisdiction Act, 1879 (see s. 9 of the Summary Jurisdiction Act, 1884, *post*, p. 1065). See also the Town Police Clauses Act, 1847 (10 & 11 Vict. c. 89), s. 17, when the provisions of that section are in force in the particular district; and as to the *metropolis*, see 2 & 3 Vict. c. 47, ss. 70—72, which contain provisions of a like character to those in s. 38 of the Summary Jurisdiction Act, 1879.

Bail of
children and
young persons
apprehended
*with or with-
out warrant.*

The case of persons *apparently under 16 years of age* apprehended *with or without warrant* is specially dealt with by the Children Act, 1908. If such a person cannot be brought *forthwith* before a court of summary jurisdiction, a superintendent or inspector of police or other officer of police of equal or superior rank, or the officer in charge of the police station, *may* release him on a recognizance, with or without sureties, being entered into by him or by his parent or guardian. And such release *must* take place unless (a) the charge is one of homicide or other grave crime; or (β) it is necessary in his own interest to remove the young person from association with a reputed criminal or prostitute; or (γ) the officer has reason to believe that the release would defeat the ends of justice. If the young person

be not released, he must be detained in a "place of detention," unless the officer *certifies* that (i.) it is impracticable to do so ; or (ii.) he is of "so unruly a character" that he cannot safely be so detained ; or (iii.) by reason of his state of health, or of his mental or bodily condition, it is inadvisable so to detain him (8 Edw. 7, c. 67, ss. 94, 95). Any such certificate must be produced to the court. As to providing "places of detention," see *post*, p. 122. The obligation to provide such places became operative on January 1st, 1910.

Process between England and Scotland or Ireland.

A *warrant of arrest* may, as we have already seen, be despatched to and executed in any part of the United Kingdom, subject to the necessary formalities as to backing when beyond the jurisdiction of the issuing magistrate. Warrants of arrest.

A *summons*, however, whether in respect of an information or complaint, was formerly only available within England and Wales, while a subpoena or witness summons was, until 1880, confined within still narrower limits. By the Summary Jurisdiction (Process) Amendment Act, 1881 (44 & 45 Vict. c. 24), it is provided (ss. 4, 8), that any summons or subpoena, warrant of commitment, warrant of imprisonment, warrant of distress, order, or other document or process (other than a warrant of arrest, as to which further provision was unnecessary) issued, *under the Summary Jurisdiction Acts*, by a court of summary jurisdiction in England, and endorsed by a like court in Scotland, or *vice versa*, "may be served and executed within the jurisdiction of the endorsing court in like manner as it may be served and executed within the jurisdiction of the issuing court, and by an officer either of the issuing or of the endorsing court." Such endorsement may be made upon proof of the handwriting of the issuing justice, given either upon oath or by declaration (s. 4 (i.)). Process between England and Scotland.
P. 1060.

The statute applies generally to process under the Summary Jurisdiction Acts, except that it does not apply to a process requiring the appearance of a person in respect of a claim for a CIVIL DEBT (s. 4 (iv.)), and cf. *post*, p. 118). Before issuing a warrant for the apprehen-

Process
between
England and
Scotland, &c.
—*contd.*

P. 1060.

In bastardy
proceedings.

sion of a person who has *failed* to answer the summons, the court must be "satisfied *on oath* that there is sufficient *prima facie* evidence in support of the information or complaint"; and, if the process is to procure the attendance of a *witness*, the court must be satisfied *on oath* of the probability that the evidence of the witness will be material, and that the witness will not appear voluntarily (s. 4 (ii.), (iii.)). A "reasonable amount" must be paid or tendered to the witness for his expenses (*ib.*). So far as **BASTARDY** proceedings are concerned, special provision is made, and power given by order or decree to adjudge a person *within the jurisdiction of the court* to pay for the maintenance and education of his bastard child, although the defendant may ordinarily reside, or the child be born, or the mother ordinarily reside in Scotland (s. 6); but it is to be observed that, in the case of *bastardy* proceedings, there is no provision authorizing the *service of the summons* on the putative father in Scotland (*Berkeley v. Thompson*) (*r*). If, however, the summons has been served in England and an order duly made, any process issued in England to *enforce obedience to such order* may be endorsed and executed in Scotland (s. 6).

P. 1061.

Ireland, Isle
of Man and
Channel
Islands.

As to Ireland, the Isle of Man, and the Channel Islands, *warrants of arrest* may, as has already been pointed out, be executed therein when "backed" in due course; but there is no *general* statutory provision (such as exists in the case of Scotland) for the service therein of a *summons* or other summary process. And, so far as *bastardy* proceedings are concerned, although it is clear that no *summons* can be served, it is a moot point whether the *warrant to enforce obedience* to a *bastardy* order can or cannot be executed elsewhere than in England, Wales or Scotland. The better opinion appears to be that such warrant may be executed if duly "backed" (cf. *ante*, p. 44, and 11 & 12 Vict. c. 43, s. 37, *post*, p. 1017, and 60 J. P. 267).

Pp. 967, 968.

Ss. 12—13 of the Indictable Offences Act, 1848, provide that English warrants may be backed in Ireland, the Isle of Man, the Channel Islands, and *vice versa*; while ss. 14, 15, provide that English or Irish warrants

P. 969.

(*r*) (1884) 10 App. Ca. 45; 54 L. J. M. C. 57; 49 J. P. 276.

may be backed in Scotland, or *vice versâ*. The Indictable Offences Act Amendment Act, 1868 (31 & 32 Vict. c. 107), provides (s. 4) for the backing of Scotch or Irish warrants in the Channel Islands, and *vice versâ*.

As to the backing of Irish warrants see further 14 & 15 Vict. c. 93, s. 27, and 30 & 31 Vict. c. 19, s. 1; and as to backing warrants in the Channel Islands, see further 14 & 15 Vict. c. 55, s. 18.

OATHS ACT, 1909.

(9 Edw. 7, c. 39.)

OATHS ACT,
1909. See
post, pp. 83,
84.

1. This Act may be cited for all purposes as the Oaths Act, 1909; and the Oaths Act, 1888 (*post*, p. 84), and this Act may be cited together as the Oaths Acts, 1888 and 1909.

2. (i.) *Any oath may* be administered and taken in the form and manner following: The person taking the oath shall hold the New Testament, or, in the case of a Jew, the Old Testament, *in his uplifted hand*, and shall *say or repeat after* the officer administering the oath the words, "I swear by Almighty God that . . .," followed by the words of the oath prescribed by law [or, it is presumed, such as are customarily used where no words are prescribed by law].

(ii.) The officer *shall* (unless the person about to take the oath *voluntarily objects* thereto, or is *physically incapable* of so taking the oath) administer the oath in the form and manner aforesaid without question: Provided that, in the case of a person who is *neither a Christian nor a Jew*, the oath shall be administered in any manner which is now lawful.

3. In this Act the word "officer" shall mean and include any and every person duly authorised to administer oaths.

4. (i.) This Act shall come into operation on the first day of January, 1910.

(ii.) This Act shall not apply to Scotland.

CHAPTER III.

PROCEDURE ON THE HEARING WHERE OFFENCE CHARGED IS
NOT INDICTABLE, AND IN MATTERS OF COMPLAINT (a).

EVERY offence was originally indictable at the suit of the Crown, but an immense number of minor delinquencies have been removed from the indictable category, and are now dealt with by magistrates sitting in a court of summary jurisdiction.

It is obvious, however, that certain offences which still remain in the *indictable* class, and entitle the accused person to be tried before a jury, may lie pretty close beside the border line, and might occasionally be transferred across it with advantage, provided only that proper machinery could be arranged for that purpose. They may have been attended by mitigating circumstances. Or they may have been the errors of children, or young persons, whom it is desirable to spare, if possible, the exposure of a public trial. In short, for a variety of reasons, it may appear that the ends of justice would be as well or better answered by the settlement of such cases before a bench of justices, instead of adopting the far more dilatory and costly process consequent upon indictment. Provision has accordingly been made for these exceptional cases, without infringing in any instance upon *the right* of the person chiefly interested to go before a jury should he desire to do so (see Chap. IV.).

We propose, however, in this chapter to deal only with those offences in respect of which the accused is *primâ facie* amenable to the jurisdiction of justices, *i.e.*, "non-indictable" offences.

Non-appearance of Defendant.

When defendant does not appear.

It happens occasionally that, at the time of hearing named in the summons, the defendant does not appear. If the charge relates to an indictable offence the matter

(a) As to the ENFORCEMENT of orders on complaint, see *post*, pp. 118 *et seq.*

cannot proceed in the absence of the defendant; but, in cases which the magistrates, without the consent of the accused, are entitled to dispose of finally by the exercise of summary jurisdiction, if the defendant does not appear in person, or by counsel or solicitor, the justices should first satisfy themselves that the summons has been duly served upon him, *i.e.*, in the absence of special statutory provision as to the mode of service, served *personally* upon the defendant or left with some person for him at his *last or most usual place of abode* (11 & 12 Vict. c. 43, s. 1). The statute expressly requires the constable or person who served the summons to "attend at the time and place and before the justices in the said summons mentioned to depose, if necessary, to the service of the said summons" (see further *ante*, p. 43; and cf. *R. v. Farmer (b)*). S. 41 of the Summary Jurisdiction Act, 1879, provides that *service of any summons or other process* may be proved (without prejudice to any other mode of proof) by the production of a *declaration of due service* taken before a magistrate, a commissioner to administer oaths, a clerk of the peace, or a county court registrar. The handwriting and seal of a justice or other officer on any process may be proved in a similar manner; and the declaration is, *prima facie*, proof of the statements therein contained, without proof of the signature or official character of the person who took or signed it. It is perjury wilfully to make a false declaration under this section. The fee for taking a declaration is one shilling (*post*, pp. 1048, 1090). The justices must also ascertain that the service took place a reasonable time before the day fixed for the hearing; or, if a minimum period is prescribed by statute, that the statute has been complied with.

Should the court be satisfied on these points, it may proceed to hear and determine the information or complaint in the absence of the defendant; or (unless the proceeding is by way of complaint to recover money claimed to be due) may, *after hearing evidence on oath to substantiate the matter of the information or complaint*, issue a warrant for his apprehension, and adjourn the

When defendant does not appear.

P. 997.

Service proved by declaration.

Form, p. 1114.

"Warrant to answer."

(b) [1892] 1 Q. B. 637; 61 L. J. M. C. 65; 66 L. T. 736; 40 W. R. 228; 56 J. P. 341.

Pp. 998, 1005. hearing (11 & 12 Vict. c. 43, ss. 2, 13). And “justices ought to be very cautious how they proceed in the absence of a defendant, unless they have strong ground for believing that the summons has reached him, and that he is wilfully disobeying it” (per *Cockburn, C.J., R. v. Smith*) (*c*). In case the justices have any reasonable doubt as to the summons having been duly served, a fresh summons should be issued; while if they consider that the summons, although duly served, was not served a reasonable time before the day appointed for the hearing, or if they have cause to suspect that the existence of the summons has not been brought to the defendant’s *personal* notice, the hearing should be adjourned and means taken that notice of the postponement be given to the defendant in order to afford him another opportunity of obeying the summons. It should be noted that, although the court may have jurisdiction to make an order on receiving evidence of due service of the summons, yet, if it can afterwards be established that *in point of fact* the summons was not duly served, a *certiorari* may be granted to bring up the order so that it may be quashed for want of jurisdiction (cf. *Ex parte Rice Jones* (*d*); *R. v. Farmer* (*e*)).

Appearance
by counsel or
solicitor.

P. 1005.

It is sufficient, generally, in summary cases if the defendant appear by counsel, or by solicitor duly qualified and enrolled (11 & 12 Vict. c. 43, ss. 12, 13). In the case of *Bessell v. Wilson* (*f*), penalties having been imposed on the accused, he was summoned to show cause why a distress warrant should not issue, and thereupon appeared by counsel. It was held that he had appeared “according to the exigencies of the summons.” “The legitimate object of the summons,” said *Campbell, C.J.*, “did not render necessary the *personal* appearance of the party, and that object might be better answered if he appeared by his counsel or solicitor.” Again, in a very recent case, where the defendant was represented by counsel and the justices had decided to convict, it was held that they had no power to issue a warrant for the defendant’s arrest in order that he might be produced in court and

(*c*) (1875) L. R. 10 Q. B. 604; 33 L. T. 394; 39 J. P. 613.

(*d*) (1850) 1 L. M. & P. 357; 19 L. J. M. C. 151.

(*e*) *Ante*, p. 57. See, too, *R. v. Anwyl, Ex parte Cookson* (1909), 73 J. P. 485.

(*f*) (1853) 22 L. J. M. C. 94; 17 J. P. 567; 1 E. & B. 489.

identified for the purpose of proving previous convictions (*R. v. Thompson*) (*ff*). It has, however, been commonly supposed that, even though the defendant appeared by counsel, a "warrant to answer" (*ante*, p. 57) might issue, *with a view to a future conviction*, in case his *personal* attendance was required for the purpose of identification or otherwise; but the judgments in *R. v. Thompson* seem to negative this supposition. It is true that *Alverstone*, C.J., said that he expressed "no opinion at all as to whether or not there may be some power in a magistrate to adjourn the case, and possibly in some cases to take steps to procure the attendance of the defendant or to indicate what will be his view if the defendant does not come" (see the report in J. P. or L. T.); but the general tenour of the judgments is to the effect that an appearance by counsel or solicitor is an appearance for all purposes. If this be so, great difficulties will doubtless arise in practice where, *e.g.*, the witnesses to an alleged assault do not know the defendant by name and his identity is in dispute, or, again, where it is obligatory, before the charge is proceeded with, to inform the defendant of his right to be tried by a jury (*post*, p. 63); and there will probably be an increase in the number of warrants "in the first instance." It is, perhaps, worth while to note that the statute authorizes the issue of a "warrant to answer" if the defendant "shall not *be and* appear" before the court (11 & 12 Vict. c. 43, s. 2); and it has not yet been definitely held that the express power conferred by s. 2 (*post*, p. 998) is, in every case, controlled by an implication arising from the phraseology employed in the last clause of s. 13 (*post*, p. 1006). See, too, *R. v. Montgomery*, January 13th, 1910 (K. B. D.).

Appearance
by counsel or
solicitor—
contd.

As to appearance under the Education Acts, see *post*, p. 431; in vaccination cases, *post*, p. 920; under the Public Health Acts, *post*, p. 806. As to the appearance of a clerk to the guardians, see 7 & 8 Vict. c. 101, s. 68; 23 & 24 Vict. c. 127, s. 33; and see p. 907.

When arrested under the "warrant to answer" the defendant may be brought before *any* justice having jurisdiction, who will commit him by warrant to prison, (*ff*) [1909] 2 K. B. 614; 100 L. T. 970; 25 T. L. R. 651; 73 J. P. 403.

Arrest
under
warrant to
answer.

P. 1005.

Form,
p. 1095.

Case of non-
appearance
on application
to enforce
bastardy
order.

or verbally to the custody of the constable or to such other safe custody as he may think fit, and order him to be brought up "at a certain time and place" of which the informant will have notice (11 & 12 Vict. c. 43, s. 13). No power of taking bail is in such cases conferred by the statute, *i.e.*, there is no power to release on bail pending the arrival of the day fixed for the hearing. It is, therefore, often convenient, when the information was laid for an *offence* punishable on summary conviction, to issue a warrant *in the first instance* rather than a "warrant in default."

Attention may be drawn to the particular case of non-appearance by the defendant on an application for the enforcement of a *bastardy* order. It is provided that, if the father makes default in payment under such an order, a warrant may be issued to bring him before justices with a view to their issuing a warrant of distress in the event of his refusing to make payment of the sum due. In many places it is the practice (at any rate where it is believed that the dispute is merely as to the *amount* of the arrears) to endeavour to secure the attendance of the defendant in the first instance by a *summons*, although this course is not authorized by the statute. If, however, the father neglects to appear to the summons, the application cannot be heard in his absence, but a *warrant in the first instance* must be issued to bring the defendant before the court (35 & 36 Vict. c. 65, s. 4). This procedure has, by recent legislation, been applied to the recovery of arrears due under the separation orders of married women (*post*, p. 558) and under orders for the maintenance of children in industrial schools (*post*, p. 187).

Whether war-
rants of dis-
tress, &c.,
should be
issued *ex*
parte.

It may also be observed that justices are authorized, by certain statutes, to issue warrants of distress or other like process in cases where there is no statutory direction that, before the issue of such warrant or process, the person against whom it is directed should be summoned to show cause. It is, moreover, expressly enacted by s. 1 of the Summary Jurisdiction Act, 1848 (which provides for the issue of a summons), that "nothing therein mentioned shall oblige any justice or justices of the peace to issue any such summons in any case where the application for any order of justices is by law to be made *ex*

parte'' (*post*, p. 998). Nevertheless, as a general principle, the party to be affected should be afforded an opportunity of being heard; and, unless the Act directs that the warrant of distress or other process must issue immediately so as to make the proceeding purely ministerial, a summons should be served in the first instance calling upon the offender to show cause why the warrant or process should not issue (*Painter v. Liverpool Gas Co. (g)*; *R. v. Staffordshire (h)*; and *Ex parte Francis (i)*). The case last cited was decided under an Act which required copies of pirated music, when seized by a constable, to be conveyed before a court of summary jurisdiction, and further provided that, on proof of infringement of copyright, such copies should be "forfeited or destroyed or otherwise dealt with as the court might think fit." It was held that the court could not make an order for forfeiture, &c., unless and until a summons had been served on the person from whom the copies had been seized calling upon him to show cause why the order should not be made. There are instances, however, where no summons would be necessary, *e.g.*, if the paramount object of the legislature were to promote the speedy destruction of an unwholesome thing, as in the case of the seizure and condemnation of meat unfit for human food (*White v. Redfern (k)*); or in case of an order for the removal of an infected person to a hospital (*post*, p. 844). The case of *White v. Redfern* was followed in *Thomas v. Van Os (l)*, decided on s. 47 of the Public Health (London) Act, 1891. It was there held that the duty of the magistrate, in ordering the destruction of unsound fruit, was ministerial, in the sense that he was not entitled to consider whether or no the fruit, seized under the statute, was intended for the food of man.

Applications
made *ex*
parte.

Non-appearance of Complainant or Informant.

If the defendant be present on summons or warrant, but the complainant or informant fail to appear, either

When com-
plainant or
informant
fails to
appear.

(*g*) (1835) 3 A. & E. 433.

(*h*) (1835) 5 N. & M. 94; 3 A. & E. 425.

(*i*) [1903] 1 K. B. 275; 72 L. J. K. B. 120; 67 J. P. 153.

(*k*) (1879) 5 Q. B. D. 15; 49 L. J. M. C. 19; 41 L. T. 524; 28 W. R. 168.

(*l*) [1900] 2 Q. B. 448; 69 L. J. Q. B. 665; 64 J. P. 582.

Non-appearance of informant.

P. 1005.

P. 1006.

personally or by counsel, it would seem that the justices have no alternative but to dismiss the complaint or information, unless in their discretion they think proper to adjourn the hearing (11 & 12 Vict. c. 43, s. 13). So, too, where the defendant has been arrested under a "warrant to answer," and the complainant or informant neglects to appear after receipt of due notice as to the "time and place" when and where the defendant is to be brought up (*ib.*).

As to the position when the informant has died since the laying of the information, see *ante*, p. 32.

The justices may, however, adjourn the hearing for such time and on such terms as they may think fit, and the defendant may either be committed in custody or discharged on a recognizance, with or without sureties, to re-appear. In most cases the summons (if not dismissed) should be simply adjourned, or, if the defendant is before the court on warrant, he should be admitted to bail to re-appear on the day to which the matter stands adjourned. There is no time limit placed on the period of adjournment (such as is imposed in the case of a remand upon a charge of having committed an indictable offence); but, if the defendant is to be detained in custody, the adjournment must not be for an unreasonable or unnecessarily long period.

Fresh process after dismissal for non-appearance.

If the complaint or information is dismissed, without any hearing on the merits, by reason only of the non-appearance of the complainant or informant, fresh process may issue on the application of the complainant or informant, though this would generally be upon the terms of the defendant being paid the costs incurred by him in the former proceedings. Cf. *R. v. Bennett and Bond*, *ante*, p. 41.

Non-appearance of informant on summons for assault.

It has been held, too, that, where a summons for assault has been dismissed for non-appearance of the informant, the magistrate has no jurisdiction to grant a certificate of dismissal under 24 & 25 Vict. c. 100, ss. 44, 45, which would have the effect of releasing the defendant from liability to any further proceedings (*Reed v. Nutt*) (*m*). But in this case there had been no hearing on the merits, nor any discussion as to the facts (see *post*, p. 281).

(*m*) (1890) 24 Q. B. D. 669; 59 L. J. Q. B. 311; 38 W. R. 621; 54 J. P. 599.

Can the Defendant claim to be Tried by a Jury?

If both parties are present or the court thinks it would be expedient to proceed in the absence of the defendant, the first question to consider is whether the matter is one as to which the magistrates are clearly entitled to exercise summary jurisdiction, despite any desire of the defendant to be tried by a jury. The court must, then, consider, not only whether the offence falls within the indictable category, but also whether the defendant stands in any danger of being sentenced to peremptory imprisonment for MORE THAN THREE MONTHS (*Carle v. Elkington*) (n). Because, in all cases in which this would be a possible result of his conviction for a first offence (unless the charge be one of ASSAULT), the court is bound AT THE OUTSET to inform the defendant that he is entitled, if he pleases, to be tried by a jury, and to ascertain his wishes in this respect (42 & 43 Vict. c. 49, s. 17). The necessity is imperative, even though the defendant may be already well aware of his right to be so tried; and, if the court does not give the information, the conviction will be bad, although based on a plea of guilty (*R. v. Cockshott*) (o): the trial, therefore, cannot proceed in the absence of the defendant, but, if he does not appear, his presence may be secured by means of a warrant. The judgments in *R. v. Thompson* (cited *ante*, p. 59) seem to establish that, if the defendant appears *by counsel or solicitor*, the "warrant to answer" cannot issue. If this be so, it is presumed that the learned judges considered that the choice as to the mode of trial may, in such case, be made by the defendant's advocate. But it is worthy of note that, when trial by jury is claimed, the case is to be dealt with "in all respects as if the accused were charged with an *indictable offence*," so that the defendant's presence would, after all, become essential, and could only be secured by the issue of a warrant. The section would hardly appear applicable where the summons has been issued against a body corporate or limited company, as, *e.g.*, under the Merchandise Marks Act, but we believe that,

Has defendant right to be tried by a jury although offence is non-indictable?

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(n) (1892) 67 L. T. 374; 40 W. R. 510; 56 J. P. 359.

(o) [1898] 1 Q. B. 582; 78 L. T. 168; 67 L. J. Q. B. 467; 19 Cox, 3; 62 J. P. 325.

Right to
claim trial
by jury—
contd.

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in practice, such defendants are invariably given the option of trial by jury.

If present, the accused must make his choice before the charge is gone into, and not afterwards; and should he claim to be tried by a jury, the court is required, as we have seen, to deal with the case in all respects as if he were charged with an *indictable* offence, and not with an offence punishable on summary conviction (42 & 43 Vict. c. 49, s. 17 (i.)). If it is discovered *before* the close of the case that a mistake has been made and that, through inadvertence, the defendant was not informed of his right of trial by jury, the question arises whether the mistake can be repaired. There appears to be no authority decisive of this point; but, in an able article contained in the *Justice of the Peace* (69 J. P. p. 508), it is maintained that the proceedings may, in such case, be treated as abortive, and a fresh information laid so as to enable the court to rectify the mistake. Indeed, the writer of the article apparently leans to the view that, even if the discovery were not made until *after* conviction and the conviction itself quashed for the irregularity in procedure, a fresh information might be laid, assuming, of course, that the time limited for laying an information had not then expired.

The defendant may be addressed as follows:—

“ You are charged with an offence in respect of the commission of which you are entitled, if you desire it, instead of being dealt with summarily, to be tried by a jury; do you desire to be tried by a jury? Being dealt with summarily means that you will be now tried by this court. If you desire to be tried by a jury you may be so tried at the next quarter sessions to be held in and for this . . . ”

Where an offence is punishable in the first instance by imprisonment for a term of more than three months, the defendant will not be precluded from claiming a right of trial by jury by the circumstance that the statute creating the offence (*e.g.*, in the case of certain offences against the Merchant Shipping Act, 1894) prescribes that such offence “shall be prosecuted summarily in manner provided by the Summary Jurisdiction Acts” (*R. v. Goldberg*) (*p*).

(*p*) [1904] 2 K. B. 866; 73 L. J. K. B. 970; 20 T. L. R. 684; 20 Cox, 699; 68 J. P. 554.

Special considerations apply where an offence is one in respect of the commission of which the defendant is liable to peremptory imprisonment for more than three months *by reason only of a previous conviction*, or previous convictions, for a like offence (see, *e.g.*, (e), (g), (p), and (r), *post*, pp. 66, 67). If the previous conviction or convictions be not charged in the information, as soon as the previous conviction is *proved by the prosecution*, the warning ought to be given. Where the previous conviction *is* charged, the warning must, of course, be given at the outset; but it is not necessary that a previous conviction should be stated in the information. Indeed, it has been suggested that the proper course is not to charge the previous conviction in the information (lest the minds of the justices should be affected thereby), but to wait until the court is satisfied that the offence has been committed, and has, presumably, expressed an intention to convict. Any previous conviction or convictions being then proved or admitted, the accused stands in peril of the heavier sentence, and should be afforded an option of trial by jury on the *amended* charge—the complete and developed charge on which he would be liable to imprisonment for more than three months (*R. v. Beesby* or *Beesly*)(q). In the case just cited the conviction was quashed, although the justices stated that they had paid no attention to the previous offence, which was first brought to their notice after they had decided to convict; but *Alverstone*, C.J., dissented from the decision, and it is at variance with an earlier case in which it was held that, where the court, having decided to convict, learns *for the first time* of the previous conviction, the charge may properly be dealt with *as for a first offence*, without affording any option of trial by jury (*R. v. Fowler*)(qq).

If the procedure indicated in *Beesly's* case is to be adopted, “the result,” says *Walton*, J., “may be that if, on the warning being given during the hearing of the case, the defendant elects not (*sic*) to be tried by a jury, the proceedings may have to be formally commenced *de novo*.” And it may be added that, as the accused would,

Where liability to more than three months' imprisonment arises from a previous conviction.

(q) [1909] 1 K. B. 849; 78 L. J. K. B. 482; 100 L. T. 486; 53 S. J. 289; 25 T. L. R. 337; 73 J. P. 234.

(qq) (1894) 61 L. J. M. C. 9.

in most cases, know that the justices were going to convict him, it seems probable that he would elect to go before a jury, with the result that the evidence of the witnesses for the prosecution would have to be taken over again in the form of written depositions—and that, possibly, after the deponents had heard the evidence of the defendant and his witnesses.

Where defendant is a child between ages of 7 and 14 years.

P. 1033.

Principal cases in which such right exists.

A child could not, in any event, be imprisoned for more than three months, and it is enacted that this provision as to right of trial by jury shall not extend to the case of a child between the ages of 7 and 14 years, unless the parent or guardian of the child is present. The court must ascertain whether the parent or guardian is present, and, if so, the question must be addressed to him (42 & 43 Vict. c. 49, ss. 17 (iii.), 49; 8 Edw. 7, c. 67, s. 128 (i.)).

The following are the principal cases in which a defendant must be asked, *before the charge is proceeded with*, whether he claims to be tried by a jury:—

- (a) Charges of cruelty to children under s. 12 of the Children Act, 1908 (8 Edw. 7, c. 67).
- (b) Compelling, &c., minors to sweep chimneys (3 & 4 Vict. c. 85, s. 2); and frauds as to chimney sweepers' certificates (*second offence*) (38 & 39 Vict. c. 70, s. 19).
- (c) Stealing beasts, birds, and other domestic animals not the subject of larceny at common law (24 & 25 Vict. c. 96, ss. 21, 22).
- (d) Stealing dogs (24 & 25 Vict. c. 96, s. 18).
- (e) Stealing or damaging trees, &c., where damage is not less than one shilling (*second offence*) (24 & 25 Vict. c. 96, s. 33; 24 & 25 Vict. c. 97, s. 22); stealing or damaging fences (*second offence*) (24 & 25 Vict. c. 96, s. 34; 24 & 25 Vict. c. 97, s. 25).
- (f) Stealing plants, roots, &c., in a garden (24 & 25 Vict. c. 96, s. 36); or damaging such plants, &c. (24 & 25 Vict. c. 97, s. 23).
- (g) Stealing or damaging roots, plants, &c., growing elsewhere than in a garden (*second offence*) (24 & 25 Vict. c. 96, s. 37; 24 & 25 Vict. c. 97, s. 24).
- (h) Maliciously wounding dogs, &c. (not cattle) (24 & 25 Vict. c. 97, s. 41).
- (i) Forging trade marks, and other offences under the Merchandise Marks Act (50 & 51 Vict. c. 28);

- forging pedlar's certificate (*second offence*) (34 & 35 Vict. c. 96, s. 12).
- (k) Certain offences under the Prisons Act (28 & 29 Vict. c. 126, s. 38).
- (l) Charges under the Betting House Act (16 & 17 Vict. c. 119, s. 3).
- (m) Charges under the Gaming House Acts (8 & 9 Vict. c. 109, s. 4; 17 & 18 Vict. c. 38).
- (n) Forging certificate for a pawnbroker's licence, or uttering such forged certificate (35 & 36 Vict. c. 93, s. 44).
- (o) Charges under the Explosives Act where penalty exceeds 100*l.* (38 & 39 Vict. c. 17, s. 92). Defendant may *object* to summary trial; see also p. 68.
- (p) Night poaching (*second offence*) (*Williams v. Wynne*) (*r*) (9 Geo. 4, c. 69, s. 1): certain charges under Salmon Fishery Act, 1861 (*third offence*) (24 & 25 Vict. c. 109; *post*, p. 479).
- (q) Offences under Part I. (Infant Life Protection) of Children Act, 1908 (8 Edw. 7, c. 67, s. 9).
- (r) Summary proceedings for the suppression of brothels under the Criminal Law Amendment Act (*second offence*) (48 & 49 Vict. c. 69, s. 13).
- (s) Certain offences under the Army Act, s. 153, and under the Reserve Forces Act (45 & 46 Vict. c. 48, s. 17; and see 7 Edw. 7, c. 9, s. 20).
- (t) Workmen in certain manufactories purloining, embezzling, &c., materials intrusted to them (*second offence*) (17 Geo. 3, c. 56, s. 1).
- (u) Obtaining, by false representation, registration as a member of the Royal College of Veterinary Surgeons (44 & 45 Vict. c. 62, s. 11).
- (v) Certain offences by ticket-of-leave men and persons under police supervision (34 & 35 Vict. c. 112; see *post*, pp. 400, 401).
- (w) Public Health (London) Act, 1891 (54 & 55 Vict. c. 76): exposure of unsound meat (s. 47).
- (x) Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60, s. 680; see *R. v. Goldberg*) (*s*).
- (y) Charges under the Prevention of Corruption Act, 1906 (6 Edw. 7, c. 34, s. 1).

Principal cases in which such right exists—*contd.*

(*r*) (1888) 52 J. P. 343.

(*s*) *Ante*, p. 64.

(z) Offences under s. 7 of the Fertilisers and Feeding Stuffs Act, 1906 (6 Edw. 7, c. 27).

(aa) Master neglecting to provide servant or apprentice with food, medical aid, &c. (38 & 39 Vict. c. 86, ss. 6, 10).

(bb) Knowingly making false statements to obtain an old age pension (8 Edw. 7, c. 40, s. 9).

(cc) Gambling in marine insurances (9 Edw. 7, c. 12; *post*, p. 513).

If defendant claim to be tried by a jury, proceedings to be as though offence were indictable.

P. 1033.

Expenses of prosecution.

If defendant elect to be tried on indictment, this fact need not be stated therein.

Other cases of right to demand trial by jury.

Should the defendant claim to be tried by a jury, the court of summary jurisdiction must, as we have seen, deal with the case in all respects as if the accused were charged with an indictable offence, and not with an offence punishable on summary conviction, and the offence is deemed, as respects the person so charged, to be an indictable offence (42 & 43 Vict. c. 49, s. 17 (i.)). As to the hearing of charges for *indictable* offences, see Chap. IV.

If the defendant, under the section last cited, elect to be tried *on indictment*, the expenses of the prosecution will be payable as in cases of felony (*ib.*). As to *bail*, see p. 165.

If the defendant elect to be tried *summarily* and is convicted, the fact that he so elected is usually and properly (though not necessarily) stated alike in the conviction and in the commitment, inasmuch as it constitutes a condition precedent to the exercise of summary jurisdiction. But if he elect to be tried by a jury, the fact need not be averred in the indictment (*R. v. Chambers*) (*t*); and the indictment may, it seems, include any charge which can be supported by the evidence on the depositions, and does not itself fall within the Vexatious Indictments Acts (*R. v. Brown*) (*u*).

As to the defendant's right to *object* to be tried summarily in cases of offences under the Conspiracy and Protection of Property Act where imprisonment *or* a penalty of 20*l.* may be imposed, see *post*, p. 398; and as to offences connected with vivisection, see *post*, p. 257.

There are a few statutes (*e.g.*, s. 12 of the Children Act, *post*, p. 373) under which the defendant may be imprisoned for more than three months if tried *summarily*, while he is made liable to still more severe punishment if convicted *on indictment*. In such a case,

(*t*) (1896) 65 L. J. M. C. 214; 75 L. T. 76; 60 J. P. 586.

(*u*) (1895) 64 L. J. M. C. 1; 59 J. P. 485.

the court may commit the defendant for trial on indictment even though he elects to be tried summarily. Again, in certain cases, he has no election, the matter resting solely with the court (cf., *e.g.*, *post*, p. 796).

Summary Proceedings.

If the justices are satisfied that the matter is one with which they are entitled to deal summarily, and that the defendant has no right to be tried by a jury or does not desire to exercise that right, the clerk should state the substance of the information or complaint to the accused and should ask him whether he has any cause to show why he should not be convicted, or why an order should not be made against him (11 & 12 Vict. c. 43, s. 14). If the defendant admits the allegations made against him and shows no sufficient cause why he should not be convicted or an order made against him, the justices will proceed to consider the question of punishment or the form of the order, as the case may be, and, if they see fit, will call for evidence of the circumstances of the case and the character of the defendant. Should the defendant, however, refuse to admit the truth of the information or complaint, the magistrates must proceed to hear the statement of the prosecutor or complainant, which may be made by himself in person or by his counsel or solicitor. The court should then hear the evidence of the witnesses, and consider such other evidence as may be adduced in support of the information or complaint.

Proceedings on hearing of charges for non-indictable offences.

P. 1006.

As we have already seen (*ante*, p. 39), it is provided by the Summary Jurisdiction Act, 1848, that “*no objection shall be taken or allowed to any information, complaint, or summons, for any alleged DEFECT therein in substance or in form*”; and there is a precisely similar provision as to alleged DEFECTS in the substance or form of *warrants* issued under that statute for the apprehension of defendants (11 & 12 Vict. c. 43, ss. 1, 3). It is further clear that, apart from statute, no process at all is necessary when, the accused being bodily before the justices, a charge is made against him, and he assents to the case being proceeded with (*R. v. Hughes*) (*v*). But, if the information and summons are so defective as to *disclose*

DEFECT in information, complaint, summons, or warrant.

P. 1000.

(*v*) (1879) 4 Q. B. D. 614 ; 40 L. T. 685 ; and see *ante*, p. 31.

no legal offence, and the defendant does not appear, there can, of course, be no conviction; while, if he does appear and refuses to waive the defect, fresh process should generally issue (cf. *Jenkins v. Merthyr Tydvil U. D. C.*) (x).

In case of defect or ambiguity defendant may apply for adjournment,

Moreover, if the defendant objects to some irregularity in the process or to the ambiguity of the charge and asks for time to prepare his defence, it ought, under ordinary circumstances, to be granted to him; and it must be observed that although, as a rule, the defendant's appearance without protest would operate to waive such irregularities, yet it is essential that he should be told explicitly what the charge is before conviction takes place (*Daisy Hopkins' Case, The Cambridge Spinning House*) (y).

and must before conviction be told explicitly what the charge is.

An objection to a defective or ambiguous summons or information can, then, often be met by an adjournment. Thus, under the Sale of Food and Drugs Acts, the summons must contain the prosecutor's name, &c., with particulars of the alleged offence, must be accompanied by a copy of the analyst's certificate, and must not be made returnable less than fourteen days from the day on which it is served. An omission to insert the required particulars would not deprive the justices of jurisdiction, though it would probably entitle the defendant to an adjournment (*Neal v. Devenish*) (z). But, if the summons were made returnable less than fourteen days from the date of service, very different considerations would arise. "That," said *Ridley, J.*, "is a matter that can never be put right. Nor can an omission to serve a copy of the analyst's certificate with the summons be put right. If it is not done at the time of serving the summons, it cannot be done afterwards." "Such matters," said *Phillimore, J.*, "are no parts of the summons, and cannot be amended by adjournment" (*Batt v. Mattinson*) (a).

But as to the issue, in such cases, of a *second* summons on the original information where the case has not been proceeded with and the summons has been allowed to drop, see *Brooks v. Bagshawe* (b).

If, when any substantial, or even formal, defect or

(x) *Post*, p. 95.

(y) (1892) 56 J. P. 263, 275.

(z) *Post*, p. 218.

(a) (1900) 64 J. P. 615.

(b) *Post*, p. 219.

ambiguity is apparent on the face of the process, the defendant does not appear, and it is not thought desirable to compel his presence, it would seem to be the better course (as there is no specific power of amendment) to allow the information or complaint to be withdrawn, without proceeding to a hearing, with a view to the institution of fresh process.

Defect in information, complaint, or summons—*contd.*

Even if the defendant appear and raise no objection to the defective information, complaint, or summons, the court should ascertain with particularity the precise matter upon which they are to be called upon to adjudicate, and should offer the defendant a reasonable adjournment in case he should seem likely to be prejudiced by the irregularity; moreover, care must be taken, in any event, as to the form of the *conviction* or *order*, for the judgment, being an entire act, cannot (at any rate, so far as a *conviction* is concerned) be severed. Thus, a conviction for one entire penalty in respect of the printing, &c., of a certain notice and a certain placard, contrary to the Municipal Elections Act, 1884, was held bad, inasmuch as there was no evidence to justify a conviction in respect of the notice, and the penalty could not be severed (*Bettesworth v. Allingham*) (c).

As we have seen (*ante*, p. 40), the information or complaint must charge *one* offence or matter of complaint only, although it is not always easy to determine whether or no this canon has been violated. Thus, when objection is raised on the ground of *duplicity*, it is, for example, often necessary to consider whether, having charged the offence against which the penalty is enacted, such offence can be proved by giving in evidence several distinct acts committed by the person charged. If so, the acts constitute one offence—otherwise not. The question is whether the offence is one involving a *continuous* act, or whether each single act is in itself a complete offence (cf. *post*, p. 113). An information charged the defendant with permitting his licensed house to be used as a brothel on certain specified dates. The dates fixed were not consecutive days, yet the court held that the charge was for one continuing offence, and the information, therefore, was not bad for duplicity (*Ex parte Burnby*) (d). So, in the

Where more than one offence or matter of complaint is charged.

(c) (1885) 16 Q. B. D. 44; 34 W. R. 296; 50 J. P. 55.

(d) [1901] 2 K. B. 458; 70 L. J. K. B. 739; 85 L. T. 168.

case of *Onley v. Gee*, where an information, laid on November 16th, alleged that "on the 5th October and at divers other days and times between the said 5th October and the laying of the said information," the defendants occupied and kept a house for betting, it was held that the information did not allege more than one offence. It was further held that the conviction could be sustained although the evidence only went to show a user on November 8th, a date not specified in the information (*e*).

Information
where statute
creates an
alternative
offence.

Moreover, where a statute creates an *alternative* offence and the same penalty is imposed in either case, it has long been decided that the information must state which offence is intended to be charged. The defendant is entitled to know which of the two offences it is sought to charge against him. A bye-law of the Board of Trade provided as follows: "No smoke or steam shall be emitted from the engines (of tramcars), so as to constitute any reasonable ground of complaint to the passengers or the public." An information stated simply that the appellant permitted smoke to escape from his engine "contrary to the bye-laws of the Board of Trade." This statement was held to be insufficient. The bye-law, as we have seen, provided for the case of the emitted smoke causing a nuisance both to the passengers and to the public, as well as for the case of a nuisance caused to *one only* of these two classes of persons, while in either case the penalty incurred was the same (*Cotterill v. Lempriere*) (*f*). With this decision must be compared that in *Davis v. Loach* (*g*), under the same bye-law; there the information alleged that the defendant did "permit smoke *and* steam to be emitted, so as to constitute reasonable ground of complaint to passengers *and* to the public." This information was, however, successfully supported, as "it was not the less an offence to emit smoke that steam was intermixed with it." And see *post*, p. 99.

It will be noted that in *Cotterill v. Lempriere* the information was ambiguous and insufficient, that is to say, it contained a "defect in substance." Now, we have already seen (*ante*, p. 39), that no "objection" is

(*e*) (1861) 30 L. J. M. C. 222 ; 25 J. P. 342.

(*f*) (1890) 24 Q. B. D. 634 ; 54 J. P. 212.

(*g*) (1886) 51 J. P. 118.

to be "allowed" for any such defect; but that, nevertheless, care must be taken to ascertain the precise matter on which the court is called upon to adjudicate, and, if necessary, to offer the defendant a reasonable adjournment. Should the justices simply overrule or ignore the objection, and a conviction be prepared following the information, such conviction may be quashed, as was that in the case of *Cotterill v. Lempriere*. The danger of ignoring an objection to the form of an information is well illustrated by the recent case of *Bingley v. Quest (h)*, where the conviction was quashed as not disclosing an offence, though *the facts* had never been in dispute either at petty or quarter sessions. By an order under the Diseases of Animals Acts, it became an offence for the owner of certain sheep not to dip the same in an approved dip between September 15th and 30th, 1906. The appellant dipped his sheep on September 26th, but not in an approved dip, and the conviction, following the information, ran: "T. H. B. is this day convicted for that he on the 26th day of September, 1906, at H., then being the owner of certain sheep, did not dip the same in a sheep-dip approved by the board, &c." As *Alverstone*, C.J., pointed out, the conviction "did not allege, even indirectly, the real offence, which was that the defendant had not before midnight of the 30th September dipped the sheep in the dip approved by the board." "It is perfectly consistent," added *Lawrance (A. T.)*, J., "with the defendant having dipped the sheep duly and properly on the 27th, the 28th, the 29th, or the 30th September."

Danger of ignoring alleged defects.

Bingley v. Quest.

It sometimes happens that the information and the summons, though in other respects clear, sufficient and unambiguous, yet charge more than one offence. Such duplicity would prove fatal if reproduced in the conviction; but it must be carefully observed that, in an information or summons, the irregularity is merely a "defect in substance," and may be met by requiring the prosecutor to *elect* on which charge he will proceed (see, *e.g.*, the case of *Rodgers v. Richards (i)*). "If two offences are charged in one information," said *Wills*, J., in his

Election in case of "duplicity."

(h) (1907) 97 L. T. 394; 5 L. G. R. 938; 71 J. P. 443.

(i) Cited *post*, p. 254.

Election in
case of
"duplicity"
—*contd.*

judgment, "the justices may, no doubt, decline to allow the prosecutor to proceed on both; but it is impossible to say that because one such charge is discarded, the other cannot be proceeded with." "The defendant," said *Hawkins, J.*, "might *rightfully object to being sued on more than one charge.* And the defect was a 'defect in substance,' as the charging of two offences in one information is forbidden by statute, but it was a defect in respect of which 'no objection' should have been 'allowed.'"

Bartholomew
v. Wiseman.

The position of justices in such cases is occasionally attended with some difficulty. Thus, in *Bartholomew v. Wiseman (k)*, W. (the servant of C.) and C. were both summoned. The information alleged that the defendants "did cruelly ill-treat, abuse *and* torture *AND* cause and procure to be cruelly ill-treated, abused and tortured a certain animal, to wit, a gelding, by working the said animal *and* causing it to be worked while in an unfit state."

Objection was taken, at the outset, on the ground of duplicity, and the court gave the informant the option of electing which offence he would charge. The informant *refused to elect*; and, after hearing evidence, the justices dismissed the information. *Coleridge, C.J.*, is reported to have said: "Both the master and the man were charged with the offence of ill-treating the horse, and, if one was charged with doing the act and the other with procuring it to be done, there was nothing to prevent each being convicted of that offence which suited his conduct. Why *the justices should not have acted as directed by the 1st section of Jervis' Act* it is difficult to understand." *Smith, J.*, is reported to have added: "This was a technical objection founded on duplicity. Still, after reading the 1st section of Jervis' Act, it is plain that the point ought not to be allowed, and *the proper course was to convict both according to the offence each committed.*" No doubt an abettor may be proceeded against as though he were a principal offender (see the cases cited *post*, p. 149); but it is not easy to determine to what extent the court decided that the process was, in truth, free from objection, and it is probable that no one, relying on the authority of this

11 & 12 Vict.
c. 43, *post*,
p. 997.

decision, has since prepared an information in a similar form.

Since the above observations were written a somewhat similar question has arisen in *Johnson v. Needham* (kk), *Johnson v. Needham*, where the information charged that the defendant did "cruelly ill-treat, abuse and torture a certain animal, to wit, a grey gelding." After hearing the evidence on both sides, the justices discovered the irregularity and, as the informant refused to elect, dismissed the information. The court declined to interfere with this decision, although the irregularity is less egregious than that in the earlier case, *Alverstone*, C.J., remarking, that "as the appellant asked for a conviction in the terms 'ill-treat, abuse and torture' and was not content with a conviction for one of the offences of ill-treating or abusing or torturing, the justices were right." The learned judge further observed: "The justices cannot decline to proceed merely on the ground that the summons is irregular in form or is open to objection on the ground of an alleged defect. They should hear the evidence, but when it has been given they must make up their minds whether an offence under the summons has been proved, and at that stage it is not placing too great a burden on the prosecutor to ask him to specify the offence which he alleges the evidence supports." The result shows that his refusal to "specify" may involve a miscarriage of justice; though the judges, in the earlier case, seem to suggest that if the prosecutor takes this course, the magistrates ought to convict according to the evidence. The two cases read together appear to establish that the defendant cannot, at the outset, "rightfully object to being sued on more than one charge" (cf. the observations of *Hawkins, J.*, ante, p. 74). It is submitted, however, that, if objection be, in fact, taken, at any stage, justices ought to require the informant to elect, and insist upon his doing so; unless it is plain that, in the conduct of his case, the defendant will not be embarrassed by the irregularity.

In a still more recent case, the defendant was charged, *R. v. Rawson*, on a single information, with cruelty to "four ponies"

(kk) [1909] 1 K. B. 626; 78 L. J. K. B. 412; 100 L. T. 493; 25 T. L. R. 245; 73 J. P. 117.

R. v. Rawson
—*contd.*

by neglecting to supply them with nourishing food. The justices signed four convictions, imposing a penalty of 5*l.* in each case, with some 4*l.* costs on one conviction. The court quashed three of the convictions, including the one which ordered the payment of costs (*R. v. Rawson*) (1). There should, doubtless, have been only one conviction (cf. *R. v. Cable*, cited *post*, p. 99); but the reasoning on which one conviction was affirmed is, perhaps, more difficult to follow. "Each of the convictions refers to 'a pony,'" said the court; "one of the convictions is, therefore, a good conviction, and none the less so because there are three other convictions which are bad." Suppose, however, the defendant had appealed to quarter sessions against each conviction, would one of the appeals have failed? If so, which appeal? Presumably, the one which happened to be tried first. But, if *compensation* were afterwards claimed under 12 & 13 Vict. c. 92, s. 4 (*post*, p. 247), in respect of a particular pony, how could it be determined whether the conviction applied to that pony?

The learned judges further desired to "express no opinion" as to what the decision would have been "if, before the defendant was convicted, he had had notice that he was being charged with four separate offences." But it is submitted that, as only one offence was charged, there could not, in any case, have been more than one conviction *on that information* against an unwilling defendant; and, moreover, that, whenever it appeared that the prosecution proposed to establish a separate act of cruelty in respect of each pony and treat the information as charging four separate offences, then the defendant was entitled to call upon the prosecution to "elect" on which charge to proceed, and to abide by such election so far as that particular information was concerned. For further decisions as to *duplicit*y, see cases cited on the form of *convictions*, *post*, p. 99.

Where evidence supports a charge other than that contained in the

Sometimes it appears that the evidence adduced in support of the charge establishes an offence differing in its nature or circumstances from that laid in the information; and it is important to distinguish such a *VARIANCE* from the *DEFECTS* with which we have been dealing.

(1) [1909] 2 K. B. 748; 78 L. J. K. B. 1156; 101 L. T. 463; 25 T. L. R. 785; 73 J. P. 483.

By s. 1 of the Summary Jurisdiction Act, 1848, it is provided that: "No objection shall be taken or allowed to any *information, complaint, or summons* for any VARIANCE between such information, complaint or summons, and the evidence adduced on the part of the informant or complainant at the hearing of such information or complaint"; but, if any such variance appear to the court "to be such that the party so summoned and appearing has been thereby *deceived or misled*," the justice or justices may *adjourn* the hearing to some future day, "on such terms as he or they shall think fit." There is, too, a precisely similar provision as to VARIANCES arising when a defendant has been apprehended on *warrant* (s. 3).

information
or complaint.
VARIANCE.

P. 998.

P. 1000.

It is further provided by s. 9 of the same statute that, in all cases of offences punishable summarily, a variance between the information and the evidence "as to the time at which such offence or act shall be alleged to have been committed" shall not be "deemed material" if the information were in fact laid within the time limited by law. Similarly, no variance "as to the *parish or township* in which the offence or act shall be alleged to have been committed" is to be "deemed material" if it were in fact committed within the jurisdiction of the justices. "If any such variance, or *any variance in any other respect* between such information and the evidence adduced," appear to be such that the party charged "has been thereby deceived or misled," the justices may adjourn on such terms as they may think fit, and in the meantime, commit the defendant to such custody as they may approve, or discharge him on bail, with or without sureties.

P. 1004.

If, then, the date or place of the commission of the offence, or the ownership of the property be incorrectly alleged, the variance will, at the most, result in an adjournment. It is, however, desirable in such cases to lay an information in an amended and corrected form (cf. *ante*, p. 71).

In *Ralph v. Hurrell* (11) the information charged wilful damage to a certain lamp affixed to the club-house of the M. club, "the property of E. H. B., S. C., and F. A.,

Ralph v
Hurrell.

the *trustees* of the said club." E. H. B. was, in fact, *lessee* of the club, and the lamp was apparently a tenant's fixture. "I think," said *Lush*, J., "that the property remained in E. H. B. Still the justices were not justified in dismissing the information on that account. They ought to have adjourned the hearing and allowed the defendant an opportunity of meeting the point if they thought he had been misled, but, if they thought he was not misled, then they should have heard the case."

No power to
substitute
one defendant
for another.

The court cannot, however, *substitute* one defendant for another, unless by consent. Thus, where the manager of a tramway company had been summoned for the breach of a bye-law, the justices, on objection being taken, substituted the name of the company for that of the manager. It was held that the justices had acted wrongly. "There was no person in court," said *Wills*, J. " (as the corporation could not appear in person). so as to enable the justices to amend by making them parties" (*Oxford Tramway Co. v. Sankey*) (*m*). The learned judge here speaks of "amending," and there are a number of similar expressions in the reports. Thus, in *Rodgers v. Richards* (*n*), *Hawkins*, J., observes: "The question is whether the magistrate had power to amend"; and, in *Ralph v. Hurrell* (*o*), *Blackburn*, J. (in the J. P. though not in the L. J.), is reported to have said: "S. 1 of 11 & 12 Vict. c. 43, enables the justices to amend, or to adjourn if there is anything to mislead." See also *R. v. Tabrum* (*p*). The statute, however, contains no express power of amendment; but, as we have seen, mistakes or irregularities may be waived and the information or summons treated as though amended.

"Amending."

P. 998.

It may be added that, in *Rodgers v. Richards*, *Hawkins*, J., said: "In the case of a *variance* between the charge and the evidence adduced, the justices are empowered to adjourn the case, but this is only in the case of a variance. Where the objection is for a *defect* in substance or in form there is no such power." This is, no doubt, true so far as s. 1 of the Summary

P. 998.

(*m*) (1890) 54 J. P. 564.

(*n*) *Ante*, p. 73.

(*o*) *Ante*, p. 77.

(*p*) *Ante*, p. 31.

Jurisdiction Act, 1848, is concerned; but there is, of course, a general power of adjournment conferred by s. 16 of the same Act. **P. 1008.**

Where a summons is not served within the time prescribed by statute, *e.g.*, under a section now repealed of the Food and Drugs Act, 1879, the appearance of a defendant *after the time prescribed* would not give the justices jurisdiction to hear the case (*cf. Dixon v. Wells*) (*q*).

Appearance of defendant will not waive statutory requirement as to time of service of summons.

It may, too, be observed that attending before the justices, for the purpose of bringing to their notice the fact of an irregularity in the service of a summons, would not constitute an appearance such as would cure the irregularity of the process (*Pearks, Gunston and Tee, Ltd. v. Richardson*) (*r*).

During the hearing of the complaint or information the magistrates may, in their discretion, direct an adjournment to a time and place to be then appointed and stated in the presence or hearing of the parties or their representatives, and, in the meantime, may suffer the defendant to go at large, or, if they see fit, may commit him to prison or other safe custody, or discharge him upon recognizances with or without sureties (11 & 12 Vict. c. 43, s. 16, and see 42 & 43 Vict. c. 49, s. 20 (xi)). There does not seem to be any power of enlarging recognizances in such a case as this, so that fresh recognizances would have to be entered into on each adjournment; nor, if the accused is remanded in custody, does there seem to be any power (such as exists in indictable cases, *post*, p. 124) to bring him before the court prior to the expiration of the remand. If either or both of the parties should not appear on the adjournment, the court may proceed as though the parties were present, and, in the absence of the prosecutor or complainant, may dismiss the information or complaint with or without costs (11 & 12 Vict. c. 43, s. 16). The High Court might, and would, interfere if it appeared from the length and circumstances of the adjournment that the action of the magistrates really amounted to declining to exercise

Court may direct adjournment,

Pp. 1008, 1035.

Forms, pp. 1095, 1110.

and remand the accused in custody.

P. 1008.

(*q*) (1890) 25 Q. B. D. 249; 59 L. J. M. C. 116; 54 J. P. 725; 62 L. T. 812; cited *post*, p. 219.

(*r*) *Ante*, p. 44.

jurisdiction or to postponing the case on some extraneous and extra-judicial ground (cf. per *Alverstone*, C.J., in *R. v. Southampton JJ. ; Ex parte Lebern*) (s).

Remand of
child or young
person.

Forms, Nos.
3, 4, p. 1141.

When dealing with a juvenile under *sixteen* years of age, who is not released on bail, the court, on remanding him or committing him for trial, must, instead of committing him to prison, commit him to custody in a "place of detention" provided under the Children Act, 1908, and named in the commitment. This is obligatory unless the court *certifies* that the juvenile is over *fourteen* and is of so unruly a character that he cannot be safely so committed, or is of so depraved a character that he is not a fit person to be so detained. The commitment may be varied, and, in case of a *young person* over *fourteen*, revoked by any court acting in and for the same place, and, on revocation, the young person may be committed to prison (8 Edw. 7, c. 67, s. 97). These provisions did not come into operation until January 1st, 1910; but the court might apply them if a "place of detention" had, in fact, been provided before that date (s. 112).

Hearing on
adjournment.

If the case is adjourned it is not necessary that the same justices who were originally present should sit when the investigation is proceeded with after the adjournment, but if the court is differently constituted the witnesses must be re-sworn and the evidence should be *repeated on oath*. As to reading over notes of the evidence given on the former occasion, cf. *post*, p. 130. In case a statute requires *the conviction* to be made within a certain limited period, care should be taken not to grant adjournments which might endanger the validity of the proceedings. But a provision that penalties shall "be recovered" within six months is not, when read with the provisions of s. 11 of Jervis' Act, a requirement that *the conviction* shall take place within that time (*Morris v. Duncan*) (t).

11 & 12 Vict.
c. 43, s. 11.
post, p. 1004.

Application
for witnesses
to be out of
court.

As we have remarked above, the informant or complainant, having stated the nature of the charge, proceeds to call his witnesses; but it may be mentioned

(s) (1907) 96 L. T. 697; 71 J. P. 332.

(t) [1899] 1 Q. B. 4; 68 L. J. Q. B. 49; 79 L. T. 379; 47 W. R. 96; 62 J. P. 823.

that before the case is entered upon either party may apply to have the witnesses out of court, a request which is usually complied with. The order does not, however, exclude the parties or their solicitors, or, generally speaking, purely scientific witnesses; and, if disobeyed, the testimony of the witness should nevertheless be received, although the circumstances attending the disobedience may be considered as affecting the witness's credit. If a magistrate is satisfied (either before or during the hearing) *by the oath or affirmation of a credible person* that anyone *within his jurisdiction* is likely to give material evidence at the hearing of an information or complaint, and will not voluntarily appear to give such evidence, whether for the prosecutor, complainant, or defendant, he must issue *a summons* requiring the attendance of the witness; and, if the summons be disobeyed without just excuse, the magistrate or the court before whom he ought to have appeared may issue *a warrant* to compel appearance (11 & 12 Vict. c. 43, s. 7). But this warrant must not issue unless the justice be satisfied *on oath* that the summons was served personally or left with some person at the last or most usual place of abode of the intended witness. The justice must also be satisfied on oath that a reasonable sum was paid or tendered to cover the costs and expenses of his journey out and home. It may, however, be pointed out that, if the magistrate is satisfied by oath that it is probable the witness will not attend unless compelled, he may, instead of process by summons, issue *a warrant in the first instance* (*ib.*). Warrants issued to compel the appearance of witnesses may be "backed" if necessary, in the same way as warrants to compel the appearance of a person charged with an offence (see *ante*, p. 44). And it is now provided by the Summary Jurisdiction Act, 1879, that a *court of summary jurisdiction* may, after the necessary proof on oath or affirmation, issue a summons to compel the attendance of a witness, although such witness is *not within the jurisdiction* of the magistrates constituting the court. Such a summons may then (after proof on oath or solemn declaration of the signature of the summons) be *indorsed* by a court of summary jurisdiction for the place where the witness may be, or be believed to be, and will

Powers under S. J. Act, 1848, where witness will not appear voluntarily.

Justice may issue witness summons, and if necessary, warrant to compel appearance.

P. 1002.
Forms, pp.
1093, 1094.

or a warrant in the first instance.

P. 1003.
Form,
p. 1094.

When witness not within the jurisdiction, the summons must be "backed"—under S. J. Act, 1879.

P. 1046.

P. 1068.

Where witness is informant, complainant, or defendant.

Production of documents.

Banker's Books Evidence Act, 1879.

Where witness is in custody.

be as efficacious as a witness summons issued under the Act of 1848 to a person "within the jurisdiction" of the magistrate granting it (42 & 43 Vict. c. 49, s. 36). As to service of the summons in Scotland, see *ante*, p. 53; and as to the meaning of "court of summary jurisdiction" see 52 & 53 Vict. c. 63, s. 13 (xi.). It would seem that the indorsement may be made by a single justice not necessarily sitting in court (cf. Form 35, *post*, p. 1110). As to the service of a summons issued by a borough justice, see *ante*, p. 5.

It is open to some doubt whether a justice can compel the attendance of an *informant*, *complainant*, or *defendant* as a witness under the above provisions of the Summary Jurisdiction Acts. Such attendance may, however, be secured by *subpœna ad testificandum* or *duces tecum*, as the case may require, issuing out of the Crown office (39 J. P. 715); and, if the witness neglects to appear, he will render himself liable to an attachment for contempt. So, too, recourse must be had to a Crown office *subpœna duces tecum* when it is desired to compel a witness to produce books, documents, &c. The fact that a document has been deposited with a bank by two persons, on the terms that it is not to be given up without the consent of both, is no answer to such a subpœna served on an officer of the bank (*R. v. Daye*) (*u*).

Under s. 7 of the Banker's Books Evidence Act, 1879 (42 & 43 Vict. c. 11), a magistrate may, on the application of a party to the proceedings, *order* that such party shall be at liberty to *inspect* and *take copies* of any *entries in a banker's book* for any of the purposes of the proceedings (*R. v. Kinghorn*) (*uu*).

With regard to procuring the attendance of witnesses who are confined in gaol, it may be observed that any judge of a superior court of common law may issue a writ or warrant for bringing up any prisoner, *not in custody under civil process*, before a justice to be examined as a witness (16 & 17 Vict. c. 30, s. 9). And there is now a general enactment providing that a secretary of state may, by written order, direct a prisoner "confined under any sentence or under commitment for trial or

(*u*) [1908] 2 K. B. 303; 77 L. J. K. B. 659; 99 L. T. 165; 72 J. P. 269.

(*uu*) [1908] 2 K. B. 949; 78 L. J. K. B. 33; 99 L. T. 794; 72 J. P. 478; 25 T. L. R. 219.

otherwise," to be taken to any place if this be necessary "in the interest of justice or for the purpose of any public inquiry" (61 & 62 Vict. c. 41, s. 11; see also "Crown Office Rules"). If the prisoner is in custody on *civil* process, the King's Bench Division would seem to have power at common law to issue a *habeas corpus ad testificandum*, under which he may be brought before magistrates to give evidence.

As to the powers conferred upon metropolitan magistrates, see 2 & 3 Vict. c. 71, s. 22.

A person of any age is competent to give evidence if he seems to have sufficient discretion to understand the nature of an oath: while the Criminal Law Amendment Act, 1885 (s. 4), and the Prevention of Cruelty to Children Act, 1904 (s. 15), and the Children Act, 1908 (s. 30), render the testimony of a child of tender years receivable in certain cases, though not given on oath (see *post*, pp. 364, 380).

Administra-
tion of oath,
&c., to
witnesses.

Before the examination of a witness is taken, he should be duly sworn or put to declare his promise to speak the truth. And, as the mode of administering the oath varies according to the peculiar religious belief professed by the witness, the magistrate should satisfy himself upon this point by questions put either to the witness or to other persons. A witness may be sworn in any form and manner which he declares to be binding on his conscience (1 & 2 Vict. c. 105).

Witness to be
sworn before
examination.

A Christian is sworn upon the four Gospels; and the following form of oath has been usually adopted in courts of summary jurisdiction, being repeated to the witness by the clerk, after he has caused the witness to take the Testament in his right hand:—

Christian,
how sworn.

But see now
OATHS ACT,
1909, *ante*,
p. 55.

"A. B. *The evidence that you shall give to this court, touching the offence charged in this information [or, touching this case], shall be the truth, the whole truth, and nothing but the truth—*

Oath of
witness.

"So help you God."

The witness then kissed the Testament and the oath was complete. It was not necessary in imposing the oath to use the exact form of words here given; any other words of similar import would have been sufficient for the purpose.

The witness may, if he please, swear with up-lifted

Scotch mode.

hand as in Scotland (51 & 52 Vict. c. 46, s. 5). The form of oath may be:—

“I, A. B., swear by Almighty God, and, as I shall answer to God at the great day of judgment, that I will tell the truth, the whole truth, and nothing but the truth.”

Quakers and Moravians.

The people called Quakers, and Moravians, have a form peculiar to themselves, recognized by the legislature, by which on giving evidence in courts of justice they *solemnly affirm* to speak the truth; and such solemn affirmation has all the effect with reference to punishment for perjury as a formal oath (9 Geo. 4, c. 32, &c.). And it is now provided generally that, if a person objects to be sworn and states that he has no religious belief, or that the taking of an oath is contrary to his religious belief, he must be permitted to make his solemn affirmation instead of taking an oath; but the court should enquire as to the particular ground of objection (*R. v. Moore*) (x). The affirmation runs: “*I, A. B., do solemnly, sincerely, and truly declare and affirm,*” &c., following the words of the oath prescribed by law, omitting any words of imprecation or calling to witness (51 & 52 Vict. c. 46, ss. 1, 2).

Jews and Mahometans. how sworn.

Persons professing themselves to be Jews should be sworn upon the Old Testament, with their heads covered; and Mahometans should be sworn upon the Koran.

OATHS ACT, 1909; *ante*, p. 55.

The Oaths Act, 1909, now provides for Christians and Jews (unless the witness voluntarily demands to be sworn otherwise) a form such as was advocated by Bentham a century ago, for it (a) requires the oath “to be pronounced by the witness himself”; (β) abolishes (xx) the “very feeble and inadequate phrase,” So help me, God; and (γ) abolishes the kissing of the book, “an exhibition altogether vague and inappropriate.”

Power to commit a contumacious witness.

If a witness appears, *in obedience to a summons or on a warrant*, and refuses to be sworn or otherwise placed under an obligation to give evidence, or if such witness subsequently refuses without just excuse to answer questions properly put to him, he may be committed by any justice present to prison for *seven* days, unless he

(x) (1892) 61 L. J. M. C. 80; 66 L. T. 125; 56 J. P. 345.

(xx) A. H. O. Circular of 6 Jan. is to the contrary effect: *Sed quære*, and see per Ridley, J. *Cen. Crim. Ct.* “*Times*” News., 15 Jan.

in the meantime consent to be examined and answer (11 & 12 Vict. c. 43, s. 7). A witness may refuse to answer any question if his answer would, in the opinion of the magistrate, tend to expose the witness to a criminal charge, or to any penalty which is reasonably likely to be sued for; and the privilege would seem to extend to cases where the wife or husband of the witness might be similarly exposed ("Stephen on Evidence," 7th edit., p. 134). As to how far a barrister or solicitor can be called upon to disclose communications which have passed between him and his client, see *post*, p. 891. It will be observed that the power to commit extends only to cases where a witness appears in obedience to a summons or warrant, and not to the case of a witness who appears voluntarily and then refuses to answer; but there are special provisions as to witnesses in *Bastardy cases* under which a witness who volunteers evidence without process may be committed for a refusal to answer (*R. v. Flavell* (y); and see *post*, p. 304).

P. 1003.
Form,
p. 1095.

As to charging two or more defendants jointly, see *post*, p. 279; and as to whether, in such a case, the full penalty can be imposed on each offender, see *post*, p. 114.

Joint
defendants.

The witnesses for the complainant or informant are examined, cross-examined and re-examined, and, if the defendant is not represented by counsel or solicitor, it is usual to remind him of his right to cross-examine each witness before he leaves the box. An informant or complainant is entitled to call witnesses and conduct his case; but learned judges have pointed out that it is generally undesirable for police officers to act as advocates (*Webb v. Catchlove* (z) and *Duncan v. Toms* (a)).

Examination
of witnesses.

The defendant should then be called upon to address the court in his defence, permitted to give evidence if he should desire to do so, and to produce his witnesses, if he have any. If the defendant is unrepresented, he should be distinctly informed that he has a right to give evidence on his own behalf (cf. *R. v. Warren*) (aa). When an accused person is the *only* witness to the facts of the case called for the defence, he must give

Defendant's
case.

(y) (1885) 14 Q. B. D. 364; 49 J. P. 406.

(z) (1886) 50 J. P. 795.

(a) (1887) 56 L. J. M. C. 81; 56 L. T. 719; 51 J. P. 631.

(aa) (1909) 25 T. L. R. 633; 73 J. P. 359.

Objection as
to "variance."

Informant
cannot sub-
stitute one
statutory
offence for
another.

evidence immediately after the close of the evidence for the prosecution (*post*, p. 175), *i.e.*, before his counsel or solicitor (if any) addresses the court. It should, too, be remembered that it is the defendant, and not the informant, who is required to give proof in relation to any "exception, exemption, proviso, excuse or qualification" which may be relied upon (*ante*, p. 40). And, if at the close of the case for the informant, objection is taken that some necessary formality has not been complied with, the court may allow further evidence to be tendered (*Hargreaves v. Hilliam*) (*b*). It is open to the defendant at this point to object that the evidence adduced does not support the information, complaint, or summons; but, as we have already indicated, variances as to time, place, ownership of property, &c., may in general be treated as though they were amended, or at the most result in an adjournment of the hearing (*ante*, p. 77). It would, however, be very different if there were a charge of one statutory offence, and proof were given of another distinct statutory offence, even although the latter offence were in fact included in the former. The justices, then, would have no jurisdiction to convict of the offence proved without the assent of the defendant, nor could they properly adjourn the case. The information should, as a rule, be dismissed and fresh proceedings commenced; for the statutory provisions as to "variance" were not intended to result in a man being called upon to meet one charge, and then, without his consent, convicted of another of a wholly different character. Thus it was held that, where a person was summoned for an assault on a constable in the execution of his duty, the justices could not, without the assent of the defendant, dismiss the charge, so far as it related to a constable in the execution of his duty, and convict of a common assault under 24 & 25 Vict. c. 100, s. 42 (*R. v. Brickhall*) (*c*). So, on a summons for an assault upon a peace officer under 24 & 25 Vict. c. 100, s. 38, which is an indictable offence, there may not be a conviction for a common assault (*R. v. Kilkenny JJ.*) (*d*). But, if the fresh charge

(*b*) (1894) 58 J. P. 655.

(*c*) (1864) 33 L. J. M. C. 156; 12 W. R. 826.

(*d*) (1871) 5 Ir. L. R. 394.

is explicitly stated and the case proceeds on the substituted charge, the defendant without demur continuing the cross-examination of witnesses, it is not open to the defendant, at the close of the case for the prosecution and after taking the chance of a decision in his favour, to object to the absence of an information, &c. (*Eggington v. Pearl* (e); and cf. *R. v. Tabrum* (f)). If the defendant takes no objection as to "variance," he will then be at liberty to comment upon the evidence already given, to make any statement he pleases in his own justification, and to bring forward his own witnesses. The prosecutor is not entitled to reply, unless in the event of some point of law being raised on the other side, as, for example, that the information, taken as true, discloses no legal offence. In such case, he may be heard, either by himself or his counsel, upon that point alone. If, however, the defendant has given evidence or called witnesses (other than witnesses *as to character*), the prosecutor is at liberty to call witnesses of his own to rebut this testimony; after which no further discussion is allowed (11 & 12 Vict. c. 43, s. 14).

Estoppel by waiver.

No general right of reply.

Rebutting evidence.

The defendant is himself a *competent and compellable* witness in all matters before justices founded on *complaint*, where the object is merely to obtain an order for the payment of money or the doing of some act. He is now, also, a *competent* witness for the *defence* even in cases founded on *information* (See EVIDENCE, *post*, p. 173).

P. 1006.

Defendant is a competent witness.

Special Defences.

Instead of defending himself by going into the whole of the merits, the accused may set up as an answer that he *bonâ fide* claims a legal right to do the act complained of, or that a question of title to property is *bonâ fide* involved in the consideration of the act complained of. It has always been regarded as a maxim that, where the title of property is in question, the exercise of a summary jurisdiction by justices of the peace is ousted. This principle is not founded upon any legislative provision,

Defence of claim of right or title.

(e) (1876) 33 L. T. 428; 40 J. P. 56.

(f) Cited *ante*, p. 31.

but is a qualification which the law itself raises in the execution of penal statutes, and is always implied in their construction (Paley on "Summary Convictions," 8th edit., p. 157).

Claim of right
to do act
complained
of.

First, where there is a *bonâ fide* claim of right to do the act complained of. When the absence of *mens rea* is not a complete defence, the right claimed must be one which is *known to the law*. Thus, it would not be sufficient for the defendant to set up a right *as one of the public* to fish in a non-navigable river, or to rely upon an allegation of a right acquired by immemorial usage to a *public* fishery in a navigable river above the flow of the tide. The public could have no such rights, and, therefore, to prove acts done by the public in the assertion of such rights, under the belief that the rights existed, would not be sufficient to excuse the defendant (*Hargreaves v. Diddams* (g); *Pearce v. Scotcher* (h)). So, to set up, in answer to an information for obstructing a footway under the Highway Act, 1835, an immemorial custom to put up refreshment stalls during a statute sessions cannot avail the defendant, inasmuch as such meetings are not immemorial; and therefore, such a custom could not exist by immemorial usage (*Simpson v. Wells*) (i). The authorities afford no *general* rule to guide justices in determining whether on any particular charge it is necessary to establish *mens rea* (cf., *e.g.*, *post*, pp. 224, 232, 633, 701); but it must be observed that, unless *mens rea* is absolutely necessary to constitute the offence, it is not sufficient that the defendant honestly believed that he had a right to do the act complained of. Where it is unnecessary to establish *mens rea*, not only must it appear that the right claimed is one that could have had a legal origin, it must also appear that the defendant has some ground for asserting his claim. Although, therefore, where *mens rea* is necessary to constitute an offence, an honest claim of right, however absurd, would frustrate a conviction; yet where, as in the case of game trespass, the absence of *mens rea* is not necessarily a defence, the

Mens rea.

(g) (1875) L. R. 10 Q. B. 582; 44 L. J. M. C. 178; 32 L. T. 600.

(h) (1882) 9 Q. B. D. 162; 46 L. T. 342; 46 J. P. 248.

(i) (1872) L. R. 7 Q. B. 214; 41 L. J. M. C. 105; 26 L. T. N. S. 163; 37 J. P. 774.

defendant who sets up a claim of right must show some ground for its assertion. These game statutes, it is said, are not mere criminal statutes, but are statutes passed for the purpose of *protecting the peculiar rights* of those entitled to shoot game (*per cur.* in *Watkins v. Major*) (*k*). If, however, "the defendant claims a right which is of an ordinary and well-known kind," and this claim is, in the opinion of the justices, set up *bonâ fide*, their jurisdiction is ousted (*per Wright, J., in Penwarden v. Palmer*) (*l*). "It was said by *Lush, J., in the case of Watkins v. Smith* (*ll*), that if there is any evidence of a legal right which a judge might leave to a jury, the justices should hold their hands; and even if the matter is doubtful it is enough to stay their jurisdiction" (*per Grantham, J., in Burton v. Hudson, infra.*) Reference may, also, be made to a later case, in which the court held that the defendant, as occupier of a house scheduled by an award made under a local Inclosure Act, had reasonable ground for believing that he had a right to shoot, and that the jurisdiction of justices was ousted (*Mann v. Nurse*) (*m*); and cf. *Burton v. Hudson* (*mm*). It is often very difficult for the court to arrive at a determination as to the existence of *bonâ fides*; but it is for the justices themselves to decide (see *Reeve v. Stoneham* (*n*) and *Reece v. Miller* (*o*)), upon the general evidence before them, whether the act charged was done in the exercise of a *bonâ fide* claim of right. They are not to accept the mere statement of the defendant, and should disregard it altogether where, upon his own showing or from other plain considerations, it is clear that such assertion is groundless. On the other hand, if the defendant can support his allegation sufficiently to induce a doubt, it is enough and the parties should, accordingly, be dismissed to try their rights elsewhere.

Mens rea—
contd.

Bona fides,

Where ample evidence is given to warrant the justices in arriving at the conclusion that a real question is

(*k*) (1875) L. R. 10 C. P. 662; 44 L. J. M. C. 164.

(*l*) (1894) 10 T. L. R. 362.

(*ll*) (1878) 26 W. R. 692.

(*m*) (1901) 17 T. L. R. 569.

(*mm*) (1909); 78 L. J. K. B. 905; 25 T. L. R. 641; 73 J. P. 401.

(*n*) (1879) 43 J. P. 732.

(*o*) (1882) 8 Q. B. D. 626; 51 L. J. M. C. 64; 47 J. P. 37.

overrides the general doctrine that a *bonâ fide* claim of right is sufficient to oust the jurisdiction of justices; it must further appear that such claim is "fair and reasonable" (see *post*, p. 693). But trespasses committed in hunting, fishing, or the pursuit of game cannot be brought within the section unless they are wilful *and* malicious.

In the case of a charge under this section against a *private person* for doing wilful damage to property, mere *bona fides* is not of itself a protection from the penalty of the statute. The supposition must also be "fair and reasonable" (*White v. Feast*) (*u*). But different considerations would seem applicable in case of a public official acting in the execution of his duties; and, where a *surveyor of highways*, who had control over surface drains, removed such a drain, the court intimated that, if justices came to the conclusion that he acted *bonâ fide*, they *ought* also to find that he did not commit wilful or malicious damage but acted under a *fair and reasonable* supposition that he had a right to remove the drain (*Denny v. Thwaites*) (*v*).

Again, the power, given to justices by s. 42 of the Offences Against the Person Act, of hearing and deciding *summarily charges of assault and battery*, is (by s. 46) not to authorize them to determine any case of assault and battery in which any question shall arise as to the *title to any lands, tenements, &c., or any interest therein or accruing therefrom*; and when, upon a charge of assault, it appeared that the defendant, who claimed to be owner of a piece of land, had committed the assault in preventing the complainant from asserting a right of placing bricks on the land, and the cross-examination of the complainant showed that the title to the land was in question, the justices were compelled to hold their hands, and *had no jurisdiction to go into the question whether the violence was excessive* (*R. v. Pearson*) (*x*). But the word "title" governs the words "any interest therein, &c.," as well as the words "lands, tenements, &c.," so that, where one commoner sought forcibly to prevent another commoner

24 & 25 Vict.
c. 97, s. 52—
contd.

Assault,
24 & 25 VICT.
c. 100, ss. 42,
46.

Title to
lands, &c.

(*u*) (1872) L. R. 7 Q. B. 353; 41 L. J. M. C. 81; 26 L. T. 611; 36 J. P. 436.

(*v*) (1877) 2 Ex. D. 21; 46 L. J. M. C. 141; 35 L. T. 629; 41 J. P. 164.

(*x*) (1870) L. R. 5 Q. B. 237; 39 L. J. M. C. 76; 22 L. T. 126; 34 J. P. 582.

from taking a horse and cart across the common and thus injuring the turf, it was held that no claim arose as to any "title" to lands or to any interest therein within the meaning of the statute (*R. v. French; Ex parte Roberts*) (y).

Moreover, the question as to property which will oust the jurisdiction of justices to determine a charge of assault under this section must be a question as to real property (*White v. Fox*) (z). Thus, in a case of assault arising in connection with a dispute as to the possession of game and rabbits claimed by the landlord's gamekeepers from a tenant who enjoyed the right to game and rabbits, it was held that the gamekeepers, even if they acted under a *bonâ fide* belief that they had a right to take the rabbits from the tenant, were yet subject to the justices' jurisdiction, as no question of title to land had arisen (*White v. Fox*) (a). It would seem, therefore, that the express provision of the statute as to jurisdiction in cases of assault operates in such cases to limit the application of the general principle (as to ouster of jurisdiction where a *bonâ fide* claim of right to property is set up) to claims relating to real property.

When question of title may be entertained.

In some cases, however, justices are from the very nature of the matter bound to entertain questions of title incidentally cognizable by them. Thus in *R. v. Young* (b), it was alleged that the defendant, contrary to the provisions of the local Improvement Act, had thrown stones down in a street. It was contended by him that the place was not a street but was his private property, and the justices accordingly held that their jurisdiction was ousted. But it was decided by the court that the justices should have proceeded to hear the case, and that the statute impliedly gave them power to determine whether the place was a street or not (see also *Williams v. Adams* (c); and *Leicester Sanitary Authority v. Holland* (d)). So, when goods have been fraudulently removed to avoid distress, justices may inquire into

(y) [1902] 1 K. B. 637; 71 L. J. K. B. 382; 50 W. R. 555; 86 L. T. 587; 66 J. P. 487.

(z) (1880) 49 L. J. M. C. 60; 44 J. P. 618.

(a) *Supra*.

(b) (1883) 52 L. J. M. C. 55; 47 J. P. 519.

(c) (1862) 31 L. J. M. C. 109; 5 L. T. N. S. 790.

(d) (1888) 57 L. J. M. C. 75; 52 J. P. 818.

a question of title raised under 11 Geo. 2, c. 19 (*post*, p. 649); and, again, in the case of alleged trespass on the land of a railway company (offence d (ii.), *post*, p. 866), the question of title is necessarily involved (*London, Brighton and South Coast Railway v. Fairbrother*) (e).

Another defence which is occasionally raised depends upon the principle contained in the maxim *nemo debet bis vexari pro uno et eodem delicto*. No doubt it is true generally that, on a valid information, the justice may issue two or even more summonses until there has been a determination of the matter on its merits, that is to say, where the earlier summons is allowed to drop and the case is not proceeded with on the return day (per *Alverstone, C.J.*, in *Brooks v. Bagshaw*) (f). But a man must not be called to account a second time for the same, or substantially the same, ground of information or complaint. Thus, where a man, having struck a horse and hurt the rider, was convicted on an information laid by the police for "wilful misbehaviour, causing hurt," under s. 78 of the Highway Act, and the rider afterwards obtained a second conviction on an information laid by himself for the assault, the second conviction was quashed on the principle of "res judicata" (*Wemyss v. Hopkins*) (g); *R. v. Blount* (h) and see *Welton v. Taneborne* (hh), cited *post*, p. 734). "The true test as to whether a previous conviction is a bar, is to inquire whether the evidence necessary to support the second proceedings would have been sufficient to procure a conviction on the first" (*R. v. Drury*) (i). Varying the form of the claim where the claim itself is the same does not, of course, prevent the application of the rule; but a prior decision on a matter incidentally cognizable will not bar the proceedings (*R. v. Hutchings*) (j). Thus, in the case last cited (a claim under s. 150 of the Public Health Act, 1875), the justices, in the

Res judicata.

Cf. *post*,
p. 848.

(e) (1900) 16 T. L. R. 167.

(f) [1904] 2 K. B. 798; 73 L. J. K. B. 839; 91 L. T. 535; 68 J. P. 514.

(g) (1875) L. R. 10 Q. B. 378; 44 L. J. M. C. 101; 33 L. T. 9; 39 J. P. 389.

(h) (1879) 43 J. P. 383.

(hh) (1908) 72 J. P. 419, and other references, *post*, p. 734.

(i) (1849) 18 L. J. M. C. 189.

(j) (1881) 6 Q. B. D. 300; 50 L. J. M. C. 35; 44 L. T. 368.

Res judicata. former proceedings, had had no jurisdiction to *decide* whether or no the particular road was a highway repairable by the public, although, for the purpose of determining the case, it might have been necessary for them to express *an opinion* on the question. But, where (as under the Private Street Works Act, 1892) the justices are created a tribunal for the purpose of deciding whether the road is repairable by the public, their decision on the question amounts to a judgment *in rem*, *i.e.*, an adjudication upon the status of a particular subject-matter, and is, as such, *conclusive* as against all persons concerned (*Wakefield Corporation v. Cooke*) (*k*). If, on the taking of a formal or technical objection, the informant, instead of applying to withdraw the case or for an adjournment, allows a *decision* to be given, a second information cannot be resorted to; and, similarly, where (after the examination of certain witnesses) the court, considering that the defendant had been illegally arrested, discharged him on that ground and *dismissed the case*, the matter was held to be *res judicata*. "The true test," said *Coleridge*, C.J., "is whether the defendant had been *put in peril*; and it is totally immaterial what was the ground on which he was discharged" (*R. v. Brakenridge*) (*l*). In another case the information alleged that, after an order to keep a dog under control, the dog had been permitted to be at large on August 21st "and for ten days thereafter." The justices wrongly dismissed the information because the evidence related *only* to August 21st; and, on a second summons, charging disobedience merely on that date, the justices convicted. This conviction was quashed, for, as Lord *Esher* observed, "the justices might have convicted on the first summons but did not do so" (*Ryley v. Brown*) (*m*). So, too, where the justices, considering the evidence insufficient, dismissed the complaint instead of granting an adjournment (cf. *R. v. Robinson*) (*n*). But, where a summons was dismissed because it omitted to aver that a certain preliminary statutory notice had

Jenkins v.
Merthyr
Tydvil
U. D. C.

(*k*) [1904] A. C. 31; 73 L. J. K. B. 88; 89 L. T. 707; 2 L. G. R. 270; 68 J. P. 225.

(*l*) (1884) 48 J. P. 293.

(*m*) (1890) 54 J. P. 486; 62 L. T. 458.

(*n*) *Post*, pp. 299, 308.

been given to the defendant, the matter was held not to be *res judicata*. Under s. 3 of the Public Health (Buildings in Streets) Act, 1888, it became an offence to continue an erection beyond the line of houses on each side *after written notice* from the local authority to discontinue the same. The summons simply charged the defendant with erecting buildings beyond the line of houses, and there was no evidence that any written notice had in fact been given. After the dismissal of the first summons, the statutory notice was given, a second summons was issued in proper form, and a conviction ensued. "The matter," said Channell, J., "had not been decided one way or the other on the first summons, and could not therefore be regarded in any sense as *res judicata*. Indeed, it would have been impossible on the form of the first summons to decide whether an offence had been committed or not." The learned judge expressed the opinion, *obiter*, that it might have been otherwise had the first summons been dismissed *on the ground that no offence had been committed* under the statute (*Jenkins v. Merthyr Tydvil U. D. C.*) (o).

Res judicata
—*contd.*

Jenkins v.
Merthyr
Tydvil
U. D. C.—
contd.

A dictum of the court in *Pickavance v. Pickavance* (p) suggests that, when a summons is *withdrawn* by leave of the justices, such withdrawal amounts to an order of dismissal and would preclude the issue of a fresh summons. But it is submitted that this result would not necessarily follow, at any rate unless the withdrawal took place after a hearing on the merits (*sed cf.* 67 J. P. 441). It seems open to doubt whether, after evidence has been given, an information or complaint can properly be "withdrawn" against the wish of either of the parties. The statute provides only for a conviction or order (as the case may be), or the dismissal of the information or complaint (11 & 12 Vict. c. 43, s. 14).

P. 1007.

The Decision.

When the case is ripe for decision there must be a conviction, or an order, or a dismissal of the information or complaint. If several justices are present and acting,

The decision.

(o) (1899) 80 L. T. 600.

(p) [1901] P. 60; 70 L. J. P. 14; 84 L. T. 62.

the determination must be that of the majority. It is not competent for the mere statutory number to decide irrespective of the other justices. The chairman is not entitled to a second or casting vote, and if the justices are equally divided they should, with a view to a re-hearing, refuse to convict or make any order; or, as is generally the better course, there should be an adjournment for the attendance of additional justices. This may be done although the justices have *announced* that they are divided in opinion (*Bagg v. Colquhoun* (q)); but if, when the court is equally divided, the justices *dismiss* the information, a subsequent information (even in the case of a continuing offence) cannot be sustained so long as the circumstances remain the same (*Kinnis v. Graves*) (r).

Defamatory statements made by justices in the course of the proceedings would appear not to be actionable, even if alleged to have been made maliciously (*Law v. Llewellyn*) (s).

Where there is any substantial *doubt* in the minds of the magistrates, the defendant is entitled to the benefit of such doubt and ought to be acquitted: "the magistrates," said Lord *Alverstone* in *French v. Card* (cited *post*, p. 235), "had the strongest ground for suspicion, but they must not convict on mere suspicion." It is not absolutely necessary, even if the court decides to convict or make an order, that the penalty should be imposed or the order made *forthwith*. The case may be *adjourned* to enable the justices to consider how they will exercise such discretion as the law allows them; but, where more than one information has been laid against the defendant, justices must be careful not to mix up two criminal charges and convict or acquit on one of them with any reference to the facts appearing in the other (*R. v. Fry*) (t). It is, therefore, generally prudent to announce the decision on one information before proceeding with another; and, indeed, if there are two informations against the defendant relating to two distinct charges but

Where two or more informations have been laid.

(q) [1904] 1 K. B. 554; 73 L. J. K. B. 272; 68 J. P. 159.

(r) (1898) 67 L. J. Q. B. 583; 78 L. T. 502; 46 W. R. 480; 19 Cox, 42.

(s) [1906] 1 K. B. 487; 75 L. J. K. B. 320; 70 J. P. 220.

(t) (1898) 67 L. J. Q. B. 712; 46 W. R. 649; 78 L. T. 716; 62 J. P. 457.

based on the same set of facts, the court must give its decision on the one charge before proceeding to hear the evidence in support of the other (*Hamilton v. Walker*) (u). The court may, however, if it is thought desirable, reserve the question as to the extent or nature of the punishment to be inflicted in respect of the offence charged in the first information until after the hearing of the second charge.

Magistrates may, after giving their decision, reverse a conviction, revoke an order or make alteration in their judgment by varying the term of imprisonment or the amount of the fine; but such reversal or alteration must (unless there be a formal adjournment of the particular case) be made during the same sitting of the magistrates. Alteration of decision.

As a curious instance of the latitude permitted to justices in thus withdrawing from a verbal decision to convict, reference may be made to *Jones v. Williams* (x).

We have already adverted to the degree of care necessary in drafting a conviction or order. A defect or irregularity in an information or summons may be met by issuing an amended process or by adjournment, while the charging of two offences will result in the informant being called upon to elect; but a conviction, as Lord Tenterden said, must have as much certainty as an indictment (*R. v. Pain*) (y). Form of conviction or order.

Forms under the Summary Jurisdiction Acts are given in the Schedule to the Summary Jurisdiction Rules, 1886; see *post*, pp. 1096 *et seq.* These forms provide a place for the signature and seal of one justice only, but the Home Secretary was advised that the conviction or order should be signed by two justices, where two justices are required to convict or make the order (60 J. P. 498); and in *Wing v. Epsom U. D. C.* (z), an order made under the Public Health Act, 1875 (s. 96), and signed by one justice only, was held invalid. There does not seem to be any provision for completing a conviction or order in the event of the death of one of the adjudicating justices before it has been sealed and signed by him. Pp. 1092. *et seq.*

(u) (1892) 2 Q. B. 25; 67 L. T. 200; 56 J. P. 583; 61 L. J. M. C. 134.

(x) (1877) 36 L. T. 559; 41 J. P. 614.

(y) (1826) 5 B. & C. 251; 7 D. & R. 678.

(z) [1904] 1 K. B. 798; 73 L. J. K. B. 389; 68 J. P. 259.

P. 1007.

The Summary Jurisdiction Act, 1848 (s. 14), requires the conviction or order "to be lodged with the clerk of the peace to be by him filed among the records of the general quarter sessions of the peace"; and, when the decision is given, before the conviction or order is drawn up, "a minute or memorandum" thereof must be made (see as to entry in REGISTER, *ante*, p. 28).

Defects in
convictions
or orders.

P. 1047.

The Summary Jurisdiction Act, 1879, provides (s. 39 (i.)) that: "The description of any offence in the words of the Act, or any order, bye-law, regulation, or other document creating the offence, or in similar words, shall be sufficient in law." But the *ingredients* of the offence must, nevertheless, sufficiently appear on the face of a conviction. All that the statute means is that the *offence itself* need only be described in the words of the Act, order, bye-law, &c., creating it. The conviction must be certain and precise, while showing that the court had power to convict; and the adjudication must form part of it; nor does the statute dispense with the need for specifying and describing the time, place, and matter of the offence. If costs are adjudged to be paid, the amount thereof must be stated.

Thus, *e.g.*, in a conviction for an offence against s. 7 of the Conspiracy and Protection of Property Act, 1875 (*post*, p. 956), it is sufficient to allege that the specific act complained of was done with a view to compel the informant "to abstain from *working*" for a particular named firm without stating the particular act he was prevented from doing; but it was held to be insufficient to allege an injury to "*the property*" of a person without stating what property was alleged to have been injured (*Smith v. Moody*)(*a*). In merely alleging an injury to the informant's property, the conviction, no doubt, followed the words of the statute; but there was insufficiency with respect to the *ingredients* of the offence (per *Wills, J.*, [1903] 1 K. B. at p. 62). So, too, in another case, a conviction averred that the defendant had laid out certain streets in contravention of a bye-law as to the level, width, and construction of new streets, and had neglected to comply with a notice specifying matters in respect of which the

(*a*) [1903] 1 K. B. 56; 72 L. J. K. B. 43; 87 L. T. 682; 51 W. R. 252; 67 J. P. 69; 20 Cox, 369.

laying out or construction of the street was in contravention of the bye-laws and requiring him to execute the works omitted. This conviction was quashed, apparently on the grounds that it ought (a) to have shown that the notice was one which could be given under the bye-law, and (3) to have specified the breach of the bye-law which justified the giving of the notice (*R. v. Slater; Ex parte Bowler* (b); and see *Bingley v. Quest* (c)). In the case of *R. v. Slater, Alverstone, C.J.*, is reported to have held, further, that "the words, read in a natural way, refer to two offences—laying out *and* construction," and it is specially important to observe that the conviction must be for *one* offence only, otherwise it will be uncertain and bad for *duplicity*. Thus, in *R. v. Wells* (d), the conviction alleged that the defendant, "being the driver of a certain motor car on a certain public highway there situate, did drive the same thereon at a speed *or* in a manner dangerous to the public, &c." This conviction was held bad for duplicity; for the words of the statute are "or in a manner," not "and in a manner," and thus point to the creation of two separate offences. But, in *Smith v. Perry* (e), the conviction was under s. 72 of the Highway Act, 1835, for laying matter on the highway "to the interruption *and* personal danger of any person travelling thereon." In these circumstances, the court refused to hold the conviction bad for duplicity, inasmuch as the statute did not intend to treat the act of placing substances on the highway to the *interruption* of passengers as a distinct offence from a similar act done to the *injury* of passengers. So, too, in *R. v. Cable; Ex parte O'Shea* (f), the conviction alleged that the defendant "did cruelly ill-treat, abuse, and torture *five* cows by causing the same to be overstocked with milk"; but the court held that the conviction was not bad for duplicity. "I think," said *Alverstone, C.J.*, "that the conviction is open to the construction that it was only *one act* which caused the

Defects in convictions or orders—*contd.*

Duplicity of conviction.

(b) (1903) 67 J. P. 299.

(c) Cited *ante*, p. 73.

(d) (1904) 68 J. P. 392.

(e) [1906] 1 K. B. 262; 75 L. J. K. B. 124; 94 L. T. 140; 70 J. P. 93; 22 T. L. R. 158; 4 L. G. R. 224.

(f) [1906] 1 K. B. 719; 75 L. J. K. B. 381; 54 W. R. 626; 70 J. P. 246; 94 L. T. 772.

Duplicity of conviction—*contd.*

Amending the conviction.

cows to be overstocked." And see further cases cited *ante*, pp. 74—76.

As to the preparation of a *corrected* conviction, where one has been found defective or informal, see Paley, "Summary Convictions," 8th edit., p. 320; and as to the power to *amend* "an order or judgment" "for some *omission or mistake* in the drawing up of such order or judgment," either on appeal to quarter sessions or upon the return to a writ of *certiorari*, see s. 7 of Baines' Act (12 & 13 Vict. c. 45). Where a conviction was signed, but not sealed, the court directed justices to draw up a properly sealed conviction (*R. v. Tabrum*) (*g*).

As to the issue of warrants of distress and commitments, see *post*, pp. 108, 109.

Dismissal.

Dismissal of the information or complaint.

P. 1007.

Forms, pp. 1102, 1103.

It is provided by s. 14 of the Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), that, if the justices *dismiss* the information or complaint, it shall be lawful for them, if they think fit, being required so to do, to make an order of dismissal, and to give the defendant a *certificate* thereof, which said certificate afterwards upon being produced, without further proof, shall be a bar to any subsequent information or complaint for the same matters against the same party. The dismissal may, however, operate as an estoppel although no such certificate had in fact been obtained by the defendant: "I take the written certificate," said *Lush, J.*, "to be an artificial, but convenient, mode of proving the dismissal provided by the Act, but not necessary to the validity of the decision pronounced" (*R. v. Hutchings*) (*h*). On the authority of *Pickavance v. Pickavance* (*i*), an opinion has been expressed that not only does a *withdrawal*, with the consent of justices, amount to a *dismissal*, but that, on such a withdrawal, costs may be awarded under s. 18 of the Summary Jurisdiction Act, 1848 (67 J. P. 441), *sed quere*. The statute prescribes that the justices "shall *convict* or make an *order* upon the defendant, or *dismiss* the information or complaint, as the case may be" (11 & 12 Vict. c. 43, s. 14).

P. 1008.

P. 1007.

(*g*) Cited *ante*, p. 31.

(*h*) *Ante*, p. 93.

(*i*) Cited *ante*, p. 95.

There are special statutory provisions as to these certificates in cases of *assault* (*post*, pp. 280, 281). And as to ordering the return of property taken from an accused person, see *post*, p. 194.

PENALTY ON CONVICTION.

The punishment on conviction or the nature of the order when a complaint is held to be well founded will, of course, be subject *prima facie* to the provisions of the particular statute under which the conviction took place or the order was made. There is, however, a certain enactment which is of *general* application and of great importance, THE PROBATION OF OFFENDERS ACT, 1907 (7 EDW. 7, c. 17).

General enactments as to punishment.

In case of any OFFENCE punishable by a court of summary jurisdiction, if the justices think the charge is proved but are of opinion that, having regard to—

Discharge and conditional release of offenders.

- (a) the *character, antecedents, age, health, or mental condition* of the person charged, or
- (β) the *trivial nature* of the offence, or
- (γ) the *extenuating circumstances* under which the offence was committed,

it is inexpedient to inflict any punishment or any other than a nominal punishment, or that it is expedient to release the offender on probation, the court may, WITHOUT PROCEEDING TO CONVICTION, make an ORDER either—

- (i.) *dismissing* the information or charge, OR
- (ii.) *discharging* the offender *conditionally on his entering into a recognizance, with or without sureties, to be of good behaviour and to appear for conviction and sentence when called upon at any time during such period, not exceeding three years, as may be specified in the order.*

Form 22,
p. 1102.

The court may, *in addition*, if it is thought desirable, ORDER the defendant to pay such *damages for injury, or compensation for loss*, as may seem reasonable (not exceeding 10*l.* unless some higher limit is fixed by statute).

Damages.

Costs.

There may also be an order for the payment of "such costs of the proceedings as the court thinks reasonable." The "costs" here referred to are costs *actually incurred*, including the fees properly payable to the justices' clerk (cf. *Att.-Gen. v. Clark*) (ii).

Liability of parent or guardian.

If the offender is *under sixteen years of age* and the court is of opinion the case "would be best met" by the imposition of a fine, damages, or costs (whether with or without any other punishment), the *parent or guardian* may be ordered to pay instead of the juvenile; while, if the offender is *under fourteen*, the court *must* so order unless satisfied that the parent or guardian cannot be found, or has not conducted by his neglect to the commission of the offence (8 Edw. 7, c. 67, s. 99). See further as to this section of the Children Act, *post*, p. 121.

Conditions of recognizance.

A *recognizance* under the Probation of Offenders Act may, at the discretion of the court, contain additional *conditions* with respect to all or any of the following matters :—

- (a) for prohibiting the offender from *associating with thieves* and other undesirable persons, or from frequenting undesirable places ;
- (b) as to *abstention from intoxicating liquor*, where the offence was *drunkenness* or an offence committed under the influence of drink (cf. *R. v. Davis* (j) ;
- (c) *generally* for securing that the offender should lead an honest and industrious life (7 Edw. 7, c. 17, s. 2 (ii.)).

Probation orders.

Form 22,
p. 1102.

The court, moreover, may make what is called a *probation order*, that is to say, an order requiring that there shall be *inserted in the recognizance* a condition that the offender be *under the supervision of a named person* during the period specified in the order. The probation order may also require the recognizance to contain "such other conditions for securing such supervision

(ii) [1909] 2 K. B. 7 ; 78 L. J. K. B. 371 ; 100 L. T. 606 ; 25 T. L. R. 318 ; 73 J. P. 243.

(j) [1909] 1 K. B. 892 ; 78 L. T. K. B. 363 ; 100 L. T. 305 ; 73 J. P. 151.

as may be specified in the order" (s. 2 (i.)). The court must furnish to the offender a written notice stating in simple terms the conditions to be observed (s. 2 (iii.)).

The justices acting for a petty sessional division *may* (by a majority of those present and voting at any special sessions) appoint as *probation officer or officers* "such person or persons of either sex" as they may determine; and a probation officer, when acting under a probation order, will be subject to the control of petty sessional courts for the division for which he is so appointed. There *shall* be appointed, where circumstances permit, *special* probation officers to be called *children's probation officers*, to be named (except for special reason) in the order, where the offender is under the age of sixteen (s. 3 (i. and ii.)). A borough having a separate commission of the peace is deemed to be a petty sessional division (*ante*, p. 5).

Probation
officers.

Justices may, however, when making a probation order, place the offender under the supervision of an officer appointed for a *different* petty sessional division, if there be special reason for doing so; or they may place him under the supervision of some person who has *not been appointed* a probation officer for any particular division (s. 3 (iii.)).

For the purpose of appointing probation officers, or of continuing or renewing such appointments, a meeting of justices is to be held every year in January. Fourteen days' notice of the meeting is to be given (Home Office Rules, November 27th, 1907).

The Act and the rules made thereunder contain further detailed provisions as to the appointment, remuneration, duties, and tenure of office of probation officers, requiring in particular a report of all cases to be made to the justices in January of each year, which (or a copy whereof) is to be forwarded by the clerk to the justices to the Home Secretary before the end of February.

"The person named in a probation order may at any time be relieved of his duties, and in any such case or in case of the death of the person so named, *another person may be substituted* by the court before which the offender is bound by his recognizance to appear for conviction or

Probation
officers—
contd.

sentence, or, if he be a probation officer for a petty sessional division, by a court to whose control that officer is subject" (s. 3 (vi.)). As to resignation and dismissal of an officer, see Rules 6, 7.

Power to vary
conditions of
release.

The court before which the person is bound to appear for conviction or sentence may, *upon the application of the probation officer*, and after notice to the offender, *vary* the conditions of the recognizance. Or, again, the court, on being satisfied that the conduct of the person has been such as to make further supervision unnecessary, may *discharge* the recognizance (s. 5).

Provision if
offender fails
to observe
conditions of
release.

Any court of summary jurisdiction, if satisfied by information *on oath* that the offender has *failed to observe* any of the conditions of his recognizance, may issue a warrant for his apprehension. Or a summons may issue to the offender and his sureties (if any) requiring him or them to attend at the court.

s. 6.

If the court before which the offender appears is not that before which he is bound by recognizance to appear for conviction or sentence, the offender may be remanded on bail, or committed in custody to any prison to which the court having power to convict and sentence him has power to commit prisoners. In case of a youthful offender under sixteen, he must be remanded where practicable under the Acts cited *ante*, p. 80.

The court having cognizance of the case, if satisfied that the offender has failed as alleged, "may forthwith, without further proof of his guilt, convict and sentence him for the original offence." If the case could, in the first instance, have been disposed of by commitment to a certified industrial school (cf. (vi.) *post*, p. 182), the order to send the child to an industrial school may be made if he be still apparently under the age of *twelve* years.

"Trifling
offences."

Under a section now repealed (s. 16 of the Summary Jurisdiction Act, 1879) which gave the court power to dismiss an information where the offence was "of so trifling a nature that it was inexpedient to inflict any punishment, or any other than a nominal punishment," it was held that, where a defendant was charged with keeping a dog without a licence, justices ought not to dismiss without a penalty, on the ground that, in their opinion, the Commissioners of Inland Revenue were

wrong in refusing the defendant a certificate of exemption (*Phillips v. Evans* (k); and see *Nisbet v. Lloyd* (l); *Lee Conservancy Board v. Bishop's Stortford U. D. C.* (m)).

"Where there is a minor obstruction committed by the defendant *in common with other people* against whom *no proceedings have been taken* to compel them to reduce their obstruction, I think," said *Alverstone*, C.J., "that there are extenuating circumstances," within s. 1 (i.) of the Probation of Offenders Act, which is "not to be too strictly or narrowly construed" (*Dunning v. Trainer*) (mm).

As to the discharge of the accused on his *making amends* in the case of a first offence under the Larceny Act, or the Malicious Damage Act, see *post*, p. 169.

There is also, as to offences punishable on summary conviction, a general

Power to mitigate Penalties,

except in proceedings under Acts relating to the regular or auxiliary forces. Thus, it is provided that the court may, *in case of imprisonment*, impose the same without hard labour, and reduce the prescribed period thereof, or do either of such acts: or, *in case of a fine*, if imposed in respect of a *first offence*, reduce the prescribed amount thereof (42 & 43 Vict. c. 49, ss. 4, 52) unless the fine is inflicted under an Act carrying into effect a treaty with a foreign state, which stipulates for a *minimum* penalty (s. 54).

The term "fine" in this connection includes any pecuniary penalty or pecuniary forfeiture or pecuniary compensation payable under a conviction (s. 49).

As to the power to direct payment of the fine by instalments, see *post*, p. 112.

Despite the explicit terms of ss. 4, 52 of the Summary Jurisdiction Act, 1879, it has been held that (so far, at any rate, as enactments subsequent to that statute are concerned), where the language used and the nature of the offence created indicate the intention of the Legislature to prohibit or exclude mitigation, the power to

(k) [1896] 1 Q. B. 305; 65 L. J. M. C. 101; 44 W. R. 429; 60 J. P. 120.

(l) (1904) 68 J. P. 396; 2 L. G. R. 1277.

(m) (1906) 70 J. P. 244; 4 L. G. R. 641.

(mm) (1909) 101 L. T. 421; 7 L. G. R. 19; 25 T. L. R. 658; 73 J. P. 400.

"Extenuating circumstances."

Power to mitigate penalties.

Pp. 1026, 1054.

P. 1055.

P. 1053.

Proof of
previous
conviction.

mitigate does not exist (*Osborn v. Wood*) (n). It will, moreover, be observed that there is no power to reduce a minimum fine in case of a *second or subsequent* offence; and when, in such case, the prior conviction is proved by *legal* evidence, the penalty cannot be reduced below the prescribed minimum, although the former conviction may not be charged in the information or summons (*Murray v. Thompson*) (o). In the absence of some special statutory provision, such conviction is proved by producing the record of the conviction drawn up under s. 14 of the Summary Jurisdiction Act, 1848 (*ante*, p. 98); or by the production of a copy thereof, signed in manner provided by s. 18 of the Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112). This proof must, of course, be coupled with evidence to establish the identity of the defendant with the person referred to in the conviction. As to the effect of a "minute" of adjudication in the *register* where proceedings are taken in a court held for the *same* place, cf. *ante*, p. 29.

Power to sub-
stitute fine
for imprison-
ment.

P. 1026.

It is further enacted that, where the statute dealing with a particular offence (other than the Summary Jurisdiction Act, 1879) does not authorize the imposition of a fine, a court of summary jurisdiction may, nevertheless, if of opinion that imprisonment is not, under the circumstances, an appropriate punishment, impose

A fine instead of imprisonment.

P. 1026.

P. 1054.

P. 1009.

The fine, however, must not exceed 25*l.*, nor be of such an amount as would, in default of payment, expose the defendant to a longer term of imprisonment than could have been imposed upon him for the offence (42 & 43 Vict. c. 49, s. 4). The provisions as to the substitution of a fine do not apply to proceedings under Acts relating to the regular or auxiliary forces (*ib.* s. 52). The amount of the fine must be recovered by distress, and, in default of distress, imprisonment *without* hard labour according to scale (11 & 12 Vict. c. 43, s. 19, &c.; see *post*, pp. 108—111).

NOTE.—It may be added, that, as s. 4 of the Summary

(n) [1897] 1 Q. B. 197; 66 L. J. Q. B. 178; 76 L. T. 60; 45 W. R. 319; 61 J. P. 118.

(o) (1889) 22 Q. B. D. 142; 58 L. J. M. C. 41; 36 W. R. 22; 53 J. P. 70; and see *post*, p. 418.

Jurisdiction Act, 1879, does not cover the case where authority to impose imprisonment is given to a court of summary jurisdiction *by the Act itself*, it did not enable the court to substitute a fine for imprisonment when a child under twelve years of age was found guilty of an *indictable* offence (but see now Chap. IV., p. 142). Moreover, this provision as to the imposition of a fine is confined to offences *punishable on summary conviction*, and, therefore, does not extend to cases of larceny, &c., over forty shillings on a plea of guilty by an adult (as to which see Chap. IV., p. 139).

There is, too, conferred on the court a general dispensing power as to recognizances, the finding of sureties, and other conditions which any statute may require to be observed (42 & 43 Vict. c. 49, s. 4).

It should, moreover, be noticed that, under the Act last cited, children between the ages of seven and twelve years could not on summary conviction be imprisoned for more than one month, nor fined a larger sum than forty shillings (42 & 43 Vict. c. 49, s. 15). And, from January 1st, 1910, a child under 14 is immune from imprisonment; while a juvenile under 16 will also be immune unless *certified* by the court as of an unruly or depraved "character" and unfit for a "place of detention" (8 Edw. 7, c. 67, s. 102).

Dispensing powers as to recognizances, &c.

P. 1026.

Limitation as to punishment of children.

P. 1033.

Consequences of Non-payment of Fine.

If the justices, as is frequently the case, are empowered to impose a fine with the direct alternative of a specified term of imprisonment, the defendant, in default of payment before the rising of the court, will be committed to prison on a *warrant of commitment* (11 & 12 Vict. c. 43, s. 23) under the hand and seal of the justices, or one of them, or of *any other justice having jurisdiction* (11 & 12 Vict. c. 43, s. 29). As to delaying the issue of the warrant, see 42 & 43 Vict. c. 49, s. 21 (i.) (*post*, p. 1035).

The offender may, however, pay to the governor of the prison the amount for which he has been committed, together with the costs, if any, and at once obtain his discharge; while, if, at any time during his imprisonment, he pays any part of the sum adjudged to be paid, he is entitled to have the term of imprisonment reduced by a

Consequences resulting from non-payment of fine.

P. 1011.

P. 1013.

Form, p. 1109.

Warrant of
commitment.

P. 1047.

Forms,
pp. 1107-1109.

number of days bearing a direct proportion to the amount so paid in part satisfaction (see *post*, p. 200).

By s. 39 (iii.) of the Summary Jurisdiction Act, 1879, it is provided that "*a warrant of commitment shall not be held void by reason of any defect therein, if it be therein alleged that the offender has been convicted or ordered to do or abstain from doing any act or thing required to be done or left undone, and there is a good and valid conviction or order to sustain the same.*" But the fact and nature of the conviction or order must appear on the face of the warrant of commitment, as also the jurisdiction of the justices; though, where a warrant of commitment is defective, an amended one may be substituted if it be delivered to the gaoler before a rule for a *habeas corpus* has issued (*Ex parte Smith*) (*p*).

Issue of
warrant of
distress to
levy fines, or
sums due
under orders.

P. 1009.

In many cases justices are expressly authorized to issue *warrants of distress* to levy penalties; and, if the statute merely authorizes the imposition of a money penalty, whether by way of fine or compensation, but provides nothing as to enforcement of payment by distress, or as to the infliction of imprisonment in default of payment, the usual process of compulsion is by *warrant of distress* (11 & 12 Vict. c. 43, s. 19). A justice may, however, require affirmative evidence that the defendant possesses goods before issuing the warrant (*R. v. German*) (*q*).

P. 1035.

Forms,
pp. 1104, 1105.

This warrant may be issued at once or delayed at the discretion of the court (42 & 43 Vict. c. 49, s. 21), and, when issued, the constable to whom it is directed may levy the sum specified upon the goods of the defendant by distress and sale in manner provided by s. 43 of the same statute (*post*, p. 1049). The wearing apparel and bedding of the defendant and his family, and also the tools and implements of his trade, to the extent of 5*l.*, are protected from seizure (*ib.* s. 21 (ii.)). "Bedding" here includes a "bedstead" (see *Davis v. Harris*) (*qq*). Under the Law of Distress Amendment Act, 1888, it has been held by *Channell, J.*, that protection from distress is limited to wearing apparel, bedding, tools, and implements of the total value of £5 (*Boyd, Ltd.*

P. 1036.

(*p*) (1858) 27 L. J. M. C. 186.

(*q*) *Post*, p. 111.

(*qq*) *Post*, p. 651.

v. *Billham*) (r). If, therefore, occasion arises, justices must act upon this decision in construing that statute (*post*, p. 651). But, it will be noted that the words to which that decision relates, *viz.*, "wearing apparel and bedding of such person or his family, and the tools and implements of his trade, to the value of £5," differ in collocation from those of the Summary Jurisdiction Act, 1879, *viz.*, "wearing apparel and bedding of a person and his family, and, to the value of £5, the tools and implements of his trade" (*post*, p. 1036). It does not, therefore, seem necessary to conclude that the defendant has no protection for the tools of his trade merely because the wearing apparel, bedsteads, and bedding of his family, which are not carried off, happen to be worth £5. If no sufficient distress be found within the jurisdiction of the justice granting the warrant, levy may be made in any other county or place, provided the warrant be first duly "backed" (11 & 12 Vict. c. 43, s. 19; 42 & 43 Vict. c. 49, s. 41). See Form of Endorsement, p. 1110.

Backing
distress
warrant.

FP. 1009, 1048.

The defendant need not necessarily be detained in custody during the process of levying. The justice issuing the warrant may, if he please, suffer him to go at large either with or without security by recognizance or otherwise for his re-appearance on the return of the warrant (11 & 12 Vict. c. 43, s. 20). The mode of enforcing such recognizance is provided by s. 9 of 42 & 43 Vict. c. 49 (*post*, p. 192); and, by s. 39 (iv.) of the same statute (*post*, p. 1047), it is enacted that a warrant of distress is not to be "deemed void by reason only of any defect therein, if it be therein alleged that a conviction or order has been made, and there is a good and valid conviction or order to sustain the same."

Form,
p. 1107.

P. 1010.

P. 1028.

Defects in
distress
warrant.

In case the statute on which the *conviction* or *order* is founded provides *no mode* of levying the penalty or sum ordered to be paid, or enforcing payment of it, or provides a remedy by distress but omits to provide a remedy in the event of the distress proving insufficient, there is a general provision enabling a magistrate to commit the defendant to prison should a distress prove insufficient to discharge the liability (rr). That is to say, if the constable reports

General pro-
visions as to
distress and
imprison-
ment.

(r) [1909] 1 K. B. 14; 78 L. J. K. B. 50; 99 L. T. 780; 72 J. P. 495.

(rr) But as to "civil debts" see *post*, p. 118.

Commitment
on return of
"no goods" or
"insufficient
goods."

Forms,
pp. 1106-1108.

Pp. 1009-1011.

Pp. 1036, 1064.

that he can find no goods, or that the goods found and sold have only been sufficient to reduce and not to clear off the amount adjudged to be paid, together with the costs of the levy, the justice before whom the return is made may commit the defendant to prison for a term depending on the extent of the deficiency, but not in any case exceeding three calendar months. In case part of the money has been paid, it is usual, before issuing a warrant of distress or commitment, to call upon a defendant to show cause why the warrant should not issue. Of course, if the defendant pay before levy, the warrant will not be executed; and, after imprisonment, he may secure his release by paying to the keeper of the prison the amount of penalty, together with all the costs directed to be paid (11 & 12 Vict. c. 43, ss. 19, 21, 22; 42 & 43 Vict. c. 49, s. 21 (iv.); 47 & 48 Vict. c. 43, s. 5).

Power to direct Imprisonment *without distress* on non-payment of fine, &c.

Power to
direct
imprisonment
without
distress.

P. 1036.
Form 29.
p. 1107.

Form 30,
p. 1107.

Whenever the court is satisfied, in the case of any person liable under conviction or order to a warrant of distress, that his goods, if sold, would be *insufficient to realize the money payable by him, or that the levy of the distress would be more injurious* to himself or his family than his actually going to prison, the court, instead of issuing the warrant, may (unless the sum be a civil debt) order him to be imprisoned for a period not exceeding that for which he would have been liable to be imprisoned in case the warrant had been issued and no goods found (42 & 43 Vict. c. 49, s. 21 (iii.)).

It is important to remember that, unless the court act under this section, the defendant cannot legally be committed to prison, where the penalty is leviable by distress (except "pending the return" to the warrant of distress), until the want of sufficient goods has been ascertained and duly certified. Where the court seeks to act under the section, and relies simply on the ground of insufficiency of goods, there seems to be some doubt as to how far a defendant is entitled to be heard on the question whether he has sufficient goods to satisfy a distress, before this power of peremptory imprisonment is exercised. The defendant will often admit that he has no

goods, and, in any event, unless there is actual affirmative evidence that he has goods, the justices would seem entitled to exercise the power without much inquiry (cf. *R. v. German (s)*; *In re Clew (t)*). In a recent case, justices had mulct the defendant, a second chauffeur, in a fine of 10*l.* and costs for an offence against s. 1 of the Motor Car Act, 1903. The warrant of commitment alleged that the man had "no sufficient goods whereon to levy the said distress"; and the court discharged a rule for *habeas corpus*, on the justices making affidavits to the effect that verbal inquiries had been made as to the defendant's means and that his solicitor had stated that the man had no means beyond his wages (*R. v. Mortimer (u)*).

Imprisonment without distress.

Scale of Imprisonment in Default of Payment.

There is now provided (42 & 43 Vict. c. 49, ss. 5, 47) a scale regulating the *maximum* period of imprisonment which can be imposed in the event of non-payment of money adjudged to be paid by a summary conviction or order, or in default of sufficient distress, unless the sum is a civil debt or recoverable as such. It is as follows: Scale of imprisonment in default of payment of fine.

Pp. 1026, 1051.

Where the amount

	<i>Imprisonment not to exceed</i>
Does not exceed 10 <i>s.</i>	7 days.
Exceeds 10 <i>s.</i> , but does not exceed 1 <i>l.</i>	14 days.
Exceeds 1 <i>l.</i> , but does not exceed 5 <i>l.</i>	1 cal. mth.
Exceeds 5 <i>l.</i> , but does not exceed 20 <i>l.</i>	2 cal. mths.
Exceeds 20 <i>l.</i>	3 cal. mths.

Such imprisonment must be *without* hard labour, unless hard labour is expressly authorized by the Act upon which the conviction is founded. Although the matter may be open to some doubt, it is safer (when an Act simply authorizes justices to sentence to peremptory imprisonment with hard labour *or* in the alternative to impose a pecuniary penalty) not to direct hard labour in case a fine is imposed and imprisonment is directed in default of payment or distress (*R. v. JJ. of Tynemouth (x)*; *R. v.*

(s) (1892) 61 L. J. M. C. 43; 66 L. T. 264; 56 J. P. 358.

(t) (1882) 8 Q. B. D. 511; 51 L. J. M. C. 140; 30 W. R. 705.

(u) (1906) 70 J. P. 542.

(x) (1886) 16 Q. B. D. 647; 55 L. J. M. C. 181; 54 L. T. 386; 16 Cox, 74.

Turnbull (y)). As to payment of a portion of the fine, after committal to prison, see *post*, p. 200.

Power to allow Payment by Instalments, &c.

Power to
direct pay-
ment by
instalments,
&c.

P. 1027.

Forms.

p. 1096.

A court of summary jurisdiction is empowered to *allow time* for the payment of any sum adjudged to be paid, or to direct payment to be made *by instalments*, or to give the defendant an opportunity of finding *security for the payment* with or without sureties (42 & 43 Vict. c. 49, s. 7). On default in payment of any one instalment, the same proceedings may be taken as if default had been made in payment of all the instalments then remaining unpaid (*ib.*). But when payments have been made on account, whether by instalments, the proceeds of distress, or otherwise, so that the amount recoverable has been reduced, the term of imprisonment imposed by the warrant of commitment must not exceed the term which could be adjudged on non-payment of the *reduced amount* (42 & 43 Vict. c. 49, s. 21 (iv.)). And see Prison Act, *post*, p. 200, and Home Office Circulars, April 10th, 1900, May 31st, 1904, and June 14th, 1905. As to payment by instalments on an order for the recovery of a *civil debt*, see *post*, p. 119.

P. 1036.

Consecutive Imprisonments.

Power to
direct that
terms of
imprisonment
be con-
secutive.

P. 1012.

The court may direct that terms of imprisonment imposed on a defendant shall be consecutive; and, if he is already undergoing a sentence of imprisonment, the court may order the punishment to commence at the expiration of the term to which the defendant was previously sentenced (11 & 12 Vict. c. 43, s. 25; *R. v. Cutbush*) (*z*). Whenever two terms of imprisonment are imposed at the same time, and *one of them is in default of the payment of a fine or in default of sureties*, this should be ordered to begin at the *expiration of the other term*, in order that more time may be given for the payment of the fine or the procuring of sureties (Home Office Circular, February 21st, 1898). So

(*y*) (1886) 50 J. P. 222, 495; 16 Cox, 110.

(*z*) (1867) L. R. 2 Q. B. 379; 36 L. J. M. C. 70; 16 L. T. N. S. 282; 15 W. R. 742; 10 Cox, 489.

again, where sentences are imposed *at the same time*, a sentence *with* hard labour should precede rather than follow a sentence without hard labour (Circular, February 27th, 1906). And it is to be noted that the power conferred by s. 25 of the Summary Jurisdiction Act, 1848, is to order that “the imprisonment for such *subsequent* offence shall commence at the *expiration* of the imprisonment to which such defendant shall have been *previously* adjudged or sentenced.” Where, therefore, a prisoner is received in prison under two warrants of commitment *bearing different dates*, the order for consecutive terms must, if it is to be of any effect, be contained in the *later* of the two warrants (*ib.*). But in respect of *several assaults committed on the same occasion*, the court cannot by cumulative sentences of imprisonment (other than for default of finding sureties) to take effect in succession impose imprisonment exceeding six months (42 & 43 Vict. c. 49, s. 18). And where a defendant is committed to prison for non-payment of sums recoverable on judgment summons *as a civil debt*, there seems to be no power to direct that terms of imprisonment shall be consecutive.

Limitation
in case of
assaults.

P. 1034.

No applica-
tion to im-
prisonment
for non-pay-
ment of civil
debts.

Conviction to include only one Penalty, unless cumulative.

Under *Jervis' Act*, the information must be confined to one offence (*ante*, pp. 40, 71), and questions sometimes arise, in preparing the information, or when imposing the penalty, whether the penalty is cumulative in respect of several acts constituting one offence, or whether each act constitutes a distinct offence with a separate penalty (*Crepps v. Durden*) (*a*). This must depend upon the language of the particular statute; and the only general test which can be applied is this: Whether, having charged the offence against which the penalty is enacted, you can prove it by giving in evidence several distinct acts committed by the person charged? If so, the acts constitute one offence—otherwise not (*Milne v. Bale*) (*b*); and see *Apothecaries' Co. v. Jones* (*c*). The question is, whether the offence is one involving a *continuous act*, or

Penalty in
respect of one
offence only.

(a) *Smith's Leading Cases*, 11th ed., p. 651.

(b) (1875) L. R. 10 C. P. at p. 595; 44 L. J. C. P. 336.

(c) [1893] 1 Q. B. 89; 17 Cox, 588; 67 L. T. 677.

Penalty in respect of one offence only ;
contd.

whether each single act is in itself a complete offence. Thus, where a penalty was imposed for using a room for music and dancing without a licence, it was held that one penalty only was recoverable, although there had been several entertainments on different days (*Garrett v. Messenger*) (*d*). But where a statute gave power to seize, in any stall or shop, butcher's meat intended for the food of man, and unfit for such food, and made the person to whom such meat belonged, or in whose custody the same was found, liable to a penalty for every piece of meat so found, each exposure of a piece of bad meat was held to be a separate offence, and the justices to be acting within their jurisdiction in convicting the master of the stall and two of his servants severally in respect of each of four pieces of meat, making in all twelve separate convictions (*Re Hartley*) (*e*); and cf. *Larton v. Jefferies* (*f*) and *Fecitt v. Walsh* (*g*).

But penalty may be cumulative.

Although, however, several acts constitute one offence, yet the *penalty* may be of a *cumulative* character. Thus, under the Profane Oaths Act, 1745, swearing several oaths on one occasion is *one* offence (the prohibited offence being the profane cursing or swearing), yet it was held competent for the justices, in fixing the amount of the penalty, to impose that named in the statute in respect of each oath, and to fix the total amount as the *cumulative*, though, in fact, single penalty (*R. v. Scott*) (*h*).

Whether full Penalty may be imposed on each of several Defendants.

Joint or several offences.

If several commit together an act punishable with a penalty, the question arises whether distinct penalties of the full amount may be imposed upon each defendant, or whether there is to be one penalty divisible among the whole number of defendants; that is to say, whether the penalty imposed is in respect of the offence or is in respect of the offender.

(*d*) (1867) L. R. 2 C. P. 583; 36 L. J. C. P. 337; 31 J. P. 423.

(*e*) (1862) 31 L. J. M. C. 232; 26 J. P. 438.

(*f*) *Post*, p. 502.

(*g*) *Post*, p. 218.

(*h*) (1864) 4 B. & S. 368; 33 L. J. M. C. 15; 27 J. P. 420.

The distinction is pointed out by *Lord Mansfield*, C.J., in *R. v. Clarke* (*i*): "Where the offence is in its nature single and cannot be severed, then the penalty shall be only single, because, though several persons may join in committing it, it still constitutes but one offence. But where the offence is in its nature several, and where every person concerned may be separately guilty of it, then each offender is separately liable to the penalty; because the crime of each is distinct from the offence of the others, and each is punishable for his own crime." Thus, using a gun on a Sunday for the purpose of killing game contrary to 1 & 2 Will. 4, c. 32, is an offence which two persons may concur in committing, and the penalty imposed by the statute may be inflicted upon each (*R. v. Littlechild*) (*k*). So, two or more persons, who go out together trespassing in pursuit of game, may be severally convicted, and the penalty imposed on each (*Mayhew v. Wardley*) (*l*). But, on the other hand, it has been held that separate penalties could not be imposed on each of two persons for using a greyhound, the decision apparently proceeding on the words of the particular statute, "any person or persons," &c. (*R. v. Bleasdale*) (*m*).

Costs.

The justices may order the defendant to pay to the prosecutor or complainant such costs as they may deem just and reasonable, and, where the information or complaint is dismissed, they may in like manner order the prosecutor or complainant to pay costs to the defendant. The amount of costs so allowed must be specified in the conviction or order, or order of dismissal (11 & 12 Vict. c. 43, s. 18; and see 42 & 43 Vict. c. 49, s. 49). Justices should be careful not to exercise this unfettered discretion as to costs so as to defeat the obvious intention of the legislature. Thus, *e.g.*, if the *maximum* penalty were 10s. and a guinea were allowed for costs, not only would the money penalty be trebled but the

Justices
order for
costs.

Pp. 1008,
1053.

(*i*) (1777) 2 Cowp. 610.

(*k*) (1871) L. R. 6 Q. B. 293; 40 L. J. M. C. 137.

(*l*) (1863) 14 C. B. N. S. 550; 8 L. T. 504.

(*m*) (1791) 4 T. R. 809.

maximum period of imprisonment in default would be quadrupled. Moreover, a right of appeal is sometimes given in case the penalty imposed exceeds (say) 20s.; and it is manifestly inequitable that a defendant fined (say) 21s. with 10s. costs, should have a right of reviewing the decision, while a defendant fined 20s. with three guineas costs should have no such opportunity of appeal.

It must, too, be borne in mind that such costs only can be allowed as have been *actually incurred*: "The natural limit which exists as to ordering costs of proceedings is an amount up to the sum actually incurred" (*per Channell, J., in Att.-Gen. v. Clark, cited ante, p. 102*).

Where a fine adjudged by a conviction to be paid does *not exceed five shillings*, then, unless the justices think fit *expressly to order otherwise*, no order is to be made for payment by the defendant to the informant of any costs; and, unless the court *expressly order otherwise*, they must direct all fees payable or paid by the informant to be remitted or repaid to him. The justices may also, in such a case, order the fine, or part of it, to be paid to the informant in or towards the payment of his costs (42 & 43 Vict. c. 49, s. 8). By circular of March 23rd, 1891, the Home Secretary called attention to the fact that the provisions of this section were "frequently overlooked" by magistrates. He was informed that "in many courts the express order for the payment of costs is made as a matter of course, while the remission of the justices' clerks' and the constables' fees is regarded as justifiable only in exceptional circumstances." But more than fifteen years after the issue of this circular (*viz.*, on December 31st, 1906), we find that the Secretary of State was "much afraid that, in spite of the evident intention of Parliament, defendants fined to an amount not exceeding 5s. are very generally, and in some courts almost as a matter of routine, ordered to pay the costs of the prosecutor," a practice bringing the administration of justice "into disrepute."

The Children Act, 1908, provides that where a child or young person under *sixteen* years of age is himself ordered to pay costs in addition to a fine, the costs *must not exceed the fine* in amount. And, in such case, unless the court expressly order otherwise, any fees payable by

Where fine
does not
exceed 5s.

P. 1028.

Where
defendant is
a child or
young person
under sixteen.

the informant in excess of the costs must be remitted or repaid to him. The court may, further, order the fine or any part of it to be paid to the informant in or towards the payment of his costs (8 Edw. 7, c. 67, s. 101).

When a defendant *is convicted* of the offence charged against him, or *an order is made against him*, justices usually have the same power to enforce the payment of costs as they have to enforce the payment of penalties or forfeitures. The Summary Jurisdiction Act of 1848 provides that, in all cases of summary convictions or orders, the costs shall be recoverable *in the same manner* and under the same warrant as the penalty or sum of money adjudged to be paid by the conviction or order is recoverable. In case there is no such penalty or sum to be recovered, the costs may be recovered (after service of a minute of the order therefor) *by distress*, and in default of distress by imprisonment with or without hard labour (see scale, p. 111), unless, indeed, they are costs in respect of a claim for a "civil debt" (p. 118; 11 & 12 Vict. c. 43, s. 18).

Compelling payment of costs from defendant.

P. 1008.

Where the conviction, however, does not order the payment of a penalty but directs the imprisonment of the defendant, or where the order is for the doing of some act (*not the payment of a sum of money*) for the neglect or refusal to do which the defendant has been directed to be punished by imprisonment, since the costs of the conviction or order cannot be recovered under the warrant enforcing the conviction or order, the justice may, if he thinks fit, issue a warrant of distress for levying the amount of any costs which by the conviction or order were adjudged to be paid to the prosecutor or complainant by the defendant, and *in default of distress* may commit the defendant for a term (in accordance with scale, *ante*, p. 111) to commence at the termination of the imprisonment he is then undergoing, defeasible, however, on payment of the full amount of costs, with the costs of the distress, and of the commitment and conveying of the defendant to prison (11 & 12 Vict. c. 43, s. 24).

Where punishment is by imprisonment.

Form,
p. 1105.

Form,
p. 1108.

P. 1012.

As to recovery of costs ordered to be paid by an informant or complainant.

The legislature has made a distinction between the mode of recovering costs payable by a person who has been found *guilty of an offence*, and the mode of recovery of costs ordered to be paid *by an informant or complainant on the dismissal* of the information or complaint. Costs

ordered to be paid on dismissal are recoverable on judgment summons as a *civil debt*, and there can be no commitment to prison in default of distress unless it be shown that the person ordered to pay the costs has, or has had, since the order for payment was made, the means to pay (11 & 12 Vict. c. 43, s. 26; 42 & 43 Vict. c. 49, ss. 35, 47; *R. v. Lord Mayor of London; Ex parte Boaler* (n). The latter part of the form [21], *post*, p. 1102, therefore, appears inapplicable; see, too, *post*, p. 120.

P. 1013.

Pp. 1045,
1051.

Costs of complaint to recover money.

P. 1027.

So, too, costs ordered to be paid in the case of a *complaint* to recover a sum of money claimed to be due must be enforced in like manner as a *civil debt* (42 & 43 Vict. c. 49, s. 6).

Enforcement of Orders on COMPLAINT.

Enforcement of orders on complaint.

We have already seen that, except for the fact that no warrant can, under any circumstances, be issued upon a complaint *in the first instance*, the proceedings as regulated by Jervis' Act are similar to those upon an information, resulting, however, in an ORDER, and not in a conviction. But no warrant of commitment or distress can issue until the defendant has been *served with a copy of the minute* of the order itself; though such service may take place before either of the justices has signed the formal order (11 & 12 Vict. c. 43, s. 17). Such order or minute must not form any part of the warrant (*ib.*); and there is a further important distinction as to the *enforcement* of the order where the complaint is in respect of a SUM OF MONEY CLAIMED TO BE DUE.

P. 1008.

Where complaint is in respect of money claimed to be due—"civil debt."

Pp. 1027,
1045.

Forms,
p. 1116.

It is provided by the Summary Jurisdiction Act, 1879 (s. 6), that where, under any Act, whether past or future, *a sum of money claimed to be due is recoverable upon complaint, and not upon information*, such sum shall be deemed to be a "CIVIL DEBT"; and (s. 35) that any sum declared by the Act itself, or by any future Act, to be a "civil debt," recoverable summarily, or in respect of the recovery of which jurisdiction is given to a court of summary jurisdiction, shall be deemed to be a sum for payment of which an order may be made upon complaint.

(n) [1893] 2 Q. B. 146; 63 L. J. M. C. 29; 57 J. P. 633; 42 W. R. 159

It is further provided that *no warrant* shall be issued for apprehending any person for failing to appear to answer any such complaint; and that no order for the payment of any such "civil debt," or for the payment of any costs in the matter, shall, in default of distress or otherwise, be enforced by imprisonment, unless it be proved to the satisfaction of the court that the person making default *has withheld payment when the means of making it were in his power*. In such case, the court has the same power of imprisonment as a county court would have under the Debtors Act, 1869 (32 & 33 Vict. c. 62, s. 5), which extends to a maximum sentence of six weeks. But no such imprisonment will operate as a satisfaction or extinguishment of any debt or demand, or deprive any person of any right to take out execution against the effects of the person imprisoned, in the same manner as though it had not taken place. The defendant, however, cannot be *committed* more than once for non-payment of the same debt; but an order for payment by instalments operates as a separate order for each instalment, and there may, therefore, be a committal in respect of each (*Evans v. Wills*) (o). A married woman cannot be committed in respect of a civil debt payable out of her separate estate, as the judgment against her is not a personal judgment (*Scott v. Morley*) (oo); but as to non-payment of a poor rate, where her liability *does not arise out of contract*, see *Re Allen*, cited *post*, p. 782.

Proof of the means of a person making default as above may be given in such manner as the court shall think just; and for the purpose of such proof, the person himself and any witnesses may be summoned and examined upon oath (42 & 43 Vict. c. 49, s. 35 (ii.)). And under the Summary Jurisdiction Rules, 1886 (19—29), the ultimate power of imprisonment cannot be exercised unless a "judgment summons," *i.e.*, a summons to appear for the above purpose, has been served two clear days in advance upon the debtor. It is not necessary, as a preliminary to such summons, that a distress warrant should have been applied for (r. 22). The officer holding a commitment order may, on payment, discharge the judgment debtor (r. 27).

(o) (1876) 1 C. P. D. 229; 45 L. J. Q. B. 420; 24 W. R. 883.

(oo) (1887) 20 Q. B. D. 120; 57 L. J. Q. B. 43; 36 W. R. 67.

"Civil
Debts."

P. 1045.

P. 1088.

P. 1089.

Warrant of
distress with-
out complaint.

P. 1051.

Enforcement
of orders
under Acts
subsequent
to S. J. Act,
1879.

Pp. 1044,
1053.

Enforcement
of other
orders.

So, too, if the court can issue a warrant of distress for a sum of money *without an information or complaint* under the Summary Jurisdiction Act, 1848, the amount will be recoverable as a "civil debt" (42 & 43 Vict. c. 49, s. 47); as, *e.g.*, costs payable by a *prosecutor* (*ante*, p. 117), or the costs of an appeal (*post*, p. 1013).

And where, under any Act *subsequent* to the Summary Jurisdiction Act, 1879, an *order* is made for the performance of, or abstention from, any act (*other than the payment of money*), there is a general power, *in the absence of express provision*, to prescribe the mode of enforcing the requisition, and to impose, in case of default, a penalty not exceeding 1*l.* a day during the default recoverable as a "civil debt," or to direct that the defendant be imprisoned until he has remedied his defaults. But, whether in respect of one or more orders, the aggregate penalty must not exceed 20*l.* nor the aggregate term of imprisonment two months (*ib.* ss. 34, 51).

We have already seen (*ante*, p. 118) that where under any Act, whether *past or future*, a *sum of money claimed to be due* is recoverable on complaint, and not upon information, such sum is recoverable as a *civil debt*; and we have further seen (*ante*, p. 108) how an order for the *payment of money*, which is *not* a civil debt, may be enforced by distress and commitment; but, except in such cases, there is no *general provision* for the enforcement of an order made under Acts *prior* to the commencement of the Summary Jurisdiction Act, 1879. Disobedience to such an order after due personal service would, however, appear to be an indictable misdemeanour (cf. Stephen's "Digest of Criminal Law," arts. 134, 135).

Juvenile Offenders.

In addition to those provisions of the Children Act, 1908, already referred to, we may direct attention to other sections applicable to the trial of juveniles.

Attendance
at court of
parent of
child or
young person
charged with
an offence.

When a *young person* under 16 is charged with any offence, the parent or guardian having for the time being the charge of or control over him, *may* be required to attend at court "during all the stages of the proceedings." If the person so required to attend be not the

father, the attendance of the father may also be required. If a *child* under 14 be charged (or an application be made for his commitment to an industrial school), such parent or guardian, if he can be found and resides within a reasonable distance, *must* be required to attend, unless the court is satisfied that the requirement would be unreasonable (8 Edw. 7, c. 67, s. 98 (i.) (iv.)).

Where the child or young person is arrested, the constable who arrested him or the officer in charge of the police station must cause the parent or guardian, if he can be found, to be warned to attend at the court. For the purpose of enforcing such attendance, rules may be made, and "such rules may provide for a summons to a child or young person including a summons to his parent or guardian" (*see post*, p. 1139). The parent or guardian referred to in the section is the one having "actual possession and control"; and the attendance of the parent is not to be required, if, before the institution of proceedings, the child or young person was removed from the custody or charge of his parent by an order of a court (*ib.* s. 98 (ii.) (v.)).

If the court is of opinion that a case "would be best met" by the imposition of a fine, damages, or costs (whether with or without any other punishment), the court may ORDER the *parent or guardian of a child or young person* to pay the amount awarded. And, if the offender is a *child*, the court *must* so order unless satisfied that the parent or guardian cannot be found, *or*, that he has not conduced to the commission of the offence by neglecting to exercise due care of the child. The court, again, may ORDER the parent or guardian to give security for the offender's good behaviour; and may adopt either of these courses *without proceeding to the conviction* of the child or young person (*ib.* s. 99 (i.) (ii.) (iii.)).

No such order can be made without giving the parent or guardian an opportunity of being heard; but the order may be made if he has been required to attend and has failed to do so (*ib.* s. 99 (iv.)).

Any sums so imposed, or ordered to be paid on forfeiture of a security, may be recovered by distress or imprisonment as if "made on the conviction of the parent or guardian of the offence" charged (*ib.* s. 99 (v.)). The parent or guardian may APPEAL to quarter sessions (*ib.*

Forms,
Nos. 1, 2,
pp. 1140,
1141.

Power to
order parent
to pay fine,
&c., instead
of child or
young per-
son.

Forms,
Nos. 5, 9,
pp. 1142,
1144.

Substitution
of custody in
"place of
detention" in
lieu of im-
prisonment,
on or after
Jan. 1st, 1910.
Form No. 6,
p. 1143.

s. 99 (vi.)). Where an *adult* might be imprisoned, either peremptorily or in default of payment, the court may, if it appear necessary to do so, commit a *child* or *young person* to custody in a "place of detention" for a term not exceeding that for which he might, but for Part V. of the Children Act, 1908, be sentenced to imprisonment or committed to prison, nor in any case exceeding *one* MONTH (s. 106). This provision did not come into operation until January 1st, 1910, unless a "place of detention" happened to have been provided before that date, (ss. 108 (x), 112). Provision is also made as to the custody and maintenance of juveniles in these "places of detention" (ss. 109, 110). The order or judgment authorizing detention must be delivered with the juvenile to the person in charge, and, if the juvenile escapes, he may be apprehended and brought back. Expenses in respect of the place of detention and the costs of maintenance are defrayed out of the police fund in the first instance; but contributions are paid "out of money provided by Parliament" to be applied in repayment of the sums paid in respect of the juvenile (*ib.*).

As to the visitation, inspection, classification, management, and discipline of "places of detention," see RULES of *May 21st*, 1909; and as to the rate of contribution to the police fund, see RULE of *March 8th*, 1909.

As to the *bail* of children or young persons apprehended *with or without* warrant, see *ante*, p. 52; and as to the disposal of a child or young person *remanded* or *committed* for trial *without bail*, see *ante*, p. 80.

CHAPTER IV.

PROCEDURE ON THE HEARING WHERE OFFENCE
CHARGED IS INDICTABLE.

WHENEVER a magistrate is informed—

- (a) That any person *has committed* or is *suspected of having committed* any indictable offence within the limits of his jurisdiction, or
- (b) That any person guilty or supposed to be guilty of such an offence (wherever committed) *is residing* or is *suspected to reside or be* within such limits,

Procedure on the hearing where offence charged is indictable.

he may cause such person to appear before him to answer the charge (11 & 12 Vict. c. 42, s. 1). P. 959.

The words italicised in (a) must be understood as including *constructive* as well as actual commission within the jurisdiction. For, it will be remembered (Chap. I., p. 8) that where a felony or misdemeanour is committed on the boundary or within 500 yards of the boundary of two counties, or is begun in one county and completed in another, it may be dealt with, tried and punished in either; and that when any such offence has been committed upon any person or property in or upon any waggon, cart, or other carriage, employed on any journey whether by road or rail, or on board of any vessel employed in any voyage upon inland waters, the offender may be required to answer for his offence in any county through which the carriage or vessel may have passed in the course of that journey or voyage (7 Geo. 4, c. 64, ss. 12, 13).

We have already seen how the attendance of the person charged may be secured by the issue of a summons or warrant (Chap. II.); though, of course, it frequently happens, when the charge relates to an offence of an indictable character, that the accused has been taken into custody by the police without warrant, and, if so, he must be brought before a court of summary jurisdiction as soon as possible. We have

Cf. pp. 959, 964.

P. 1046.

seen, too (*ante*, p. 51), that if the accused has been apprehended without warrant and cannot be taken before a court within twenty-four hours, the officer in charge of the police station to which he has been taken should, unless the offence appears to be of a serious nature, discharge him on his entering into a recognizance, with or without securities, to appear (42 & 43 Vict. c. 49, s. 38). We have also considered the statutory provisions as to the disposal of young persons apprehended with or without warrant (*ante*, p. 52).

The HEARING.

Magistrate
should sit in
open court.

When the accused is brought before the justice (and, be it remembered, the inquiry cannot proceed in the absence of the accused), the justice should then hear the charge in open court. As to whether the hearing must *necessarily* take place in open court, cf. *ante*, p. 11.

Application
for a remand.

It often happens, by reason of the absence of witnesses or from some other cause, that it becomes necessary for the informant or his representative to ask at this early stage that the accused may be remanded. It is usually impossible, except in very simple cases, for the prosecution to be prepared in the first instance with all the evidence necessary to justify the committal of the accused, or to enable the court finally to dispose of the case.

Form (Q. 1),
p. 991.

But very slight evidence is enough to justify the man's detention until the charge can be resumed after fuller inquiry and with all necessary witnesses in attendance. With this object, the justice may, at his discretion, *verbally* desire the constable or person in charge, or any other person whom he may appoint for the purpose, to keep the accused in his custody for a space *not exceeding* THREE CLEAR DAYS. Or he may, *by warrant*, from time to time remand him to some prison or place of security, for a space *not exceeding* EIGHT CLEAR DAYS, until the time appointed for proceeding with the case. It is, however, in the justice's discretion to order the accused to be again brought before him previously to the expiration of any remand; and he may, at any time, should he think it right to do so, permit the prisoner to go at large upon his entering into a sufficient recognizance, with or without sureties, conditioned for his re-appearance in

Forms (Q. 2,
3),
pp. 991, 992.

due course (11 & 12 Vict. c. 42, s. 21). Should the accused not appear upon the recognizances, steps may be taken to forfeit the same, or a fresh warrant may issue for his apprehension. When a defendant is remanded on bail, and such bail is forthcoming, it is, in some courts, the practice to adjourn the case for a longer period than eight clear days; but the legality of this practice is open to doubt. "I see nothing in s. 21 of the Indictable Offences Act, 1848," said *Phillimore*, J., "to take away the power of adjournment where it is an adjournment of a summons, and the defendant has never surrendered to custody or been detained in custody. That makes it unnecessary to decide the point, which is a very difficult one, whether the magistrates are entitled to adjourn for more than eight days, keeping a man not in custody but under recognizance, with or without bail, to appear on another occasion" (*R. v. Southampton JJ.; Ex parte Lebern*)(a). If the prisoner on remand is unfit to attend on the appointed day, there seems no objection to the issue of a fresh commitment remanding him for a further period not exceeding eight days. For the provisions contained in the Children Act, 1908, as to the remand of a *juvenile* to the custody of a "fit person" or in a place of detention, see *ante*, pp. 52, 80, and *post*, p. 185.

Application
for a remand
—*contd.*

P. 974.

The last-cited section of the Indictable Offences Act, 1848, applies not only to cases in which magistrates cannot possibly exercise summary jurisdiction, but also to a remand in an indictable case with which the court is empowered to deal summarily under the Summary Jurisdiction Act, 1879. If, however, the court is minded to deal summarily with the case, and is not at the time a *petty sessional court*, (*i.e.*, a court of summary jurisdiction, consisting of two or more justices sitting in a petty sessional court-house, or a police or stipendiary magistrate sitting in a place where he has the authority of more than one justice, &c.), the accused may be remanded to the next practicable sitting of a petty sessional court, even although this may involve an adjournment of more than eight days (42 & 43 Vict. c. 49, s. 24 (i)). This course will be necessary because an indictable offence cannot be dealt with summarily except by a *petty sessional court* sitting on

P. 1068.

P. 1038.

(a) Cited *ante*, p. 80.

P. 1035. some day *appointed for hearing indictable offences, or at some adjournment of such court* (42 & 43 Vict. c. 49, s. 20 (viii.)).

On an adjourned hearing, if the court is differently constituted, the case must not be finally disposed of until the evidence already given has been *repeated on oath*; and see further *post*, p. 130.

Withdrawal
of prosecution.

If the court permits the prosecution to be *withdrawn, or if it is not proceeded with within a reasonable time*, the clerk must transmit to the Director of Public Prosecutions a copy of the information and of the depositions, and all other documents relating to the case (42 & 43 Vict. c. 22, s. 5). See REGULATIONS, published in 56 J. P. 602, under which the clerk is required to send a letter setting forth the circumstances of the case and, if need be, to forward all documents.

Power to
compel
attendance
of witnesses.

P. 970.

Forms,
pp. 985, 986.

Power is given to compel the appearance of any witness likely to give material evidence *for the prosecution* by summons or warrant, and the provisions of the statute are, in most respects, similar to those applicable in non-indictable cases (*ante*, p. 81); but the section only applies where the witness is *within the jurisdiction* of the justice (11 & 12 Vict. c. 42, s. 16), and it may possibly be open to some doubt whether the provisions of the Summary Jurisdiction Act, 1879, s. 36, relating to witnesses without the jurisdiction (*ante*, p. 81), are not limited to cases which can be dealt with summarily. However this may be, the attendance of a witness *not* within the jurisdiction may, if necessary, be secured by means of a Crown office subpoena. If the King's Bench is satisfied that the subpoena is not required *bonâ fide* for the purpose of obtaining relevant evidence, it will be set aside as an abuse of the process of the court (*R. v. Baines*) (*aa*).

Power to
commit
contumacious
witness.

P. 970.

Form, p. 987.

P. 1022.

There is, too, provision made for the committal for SEVEN days of a contumacious witness who appears in obedience to a summons, or who is brought up on warrant, but refuses improperly to answer questions (11 & 12 Vict. c. 42, s. 16); and these provisions apply also to witnesses who may be examined for the accused under 30 & 31 Vict. c. 35 (see s. 4 of that Act; Appendix, *post*, p. 1022).

(*aa*) [1909] 1 K. B. 258; 78 L. J. K. B. 119; 100 L. T. 78.

The prosecutor and the accused being present, with or without counsel or solicitors, as they may think fit, the nature of the charge is stated, but the accused must not (as in non-indictable matters) be asked whether he admits the charge or not. The case is, if the court thinks fit, opened by a brief statement of the facts upon the part of the prosecutor, who then proceeds to bring forward his witnesses. The latter will be examined upon oath, their depositions being taken down by the clerk in the first person, and as nearly as possible in the exact language used. Any material remark volunteered by the prisoner during any part of the proceedings should be similarly recorded. This may often be done by inserting in the deposition: "I now hear the prisoner say, etc., etc." At the close of each witness's examination, the accused or his counsel is at liberty to cross-examine him, and the answers will be taken down in the same manner as those obtained upon the examination in chief. The witness may also, if necessary, be re-examined. The depositions will then be read over to, and signed respectively by, the witnesses who have made them, as well as by the presiding justice (11 & 12 Vict. c. 42, s. 17). The provision as to the signature of the witness has, however, been held to be "directory" only (*R. v. Holloway*) (*b*). If, upon the trial of the person accused, it is proved that a deposition was duly taken and signed under the last-cited section, and that the deponent is dead or so ill as not to be able to travel, such deposition may be read as evidence in the prosecution. And it would seem that the depositions may be received in evidence although not taken before the magistrate who has actually committed the accused for trial (per *Blackburn, J.*, in *R. v. De Vilil* (1861), 9 Cox. 4). As to the position of the justice's signature, see *R. v. Parker* (*bb*); where all the depositions are under one caption and follow Form M (*post*, p. 987), one signature of the justice is, strictly speaking, sufficient.

A deposition taken at a hospital *under this section* (*i.e.*, without compliance with the provisions of 30 & 31 Vict. c. 35, s. 6, *post*, pp. 1022), was admitted by *Darling, J.*, on the ground that the magistrate was not acting under

Proceedings
on charge of
indictable
offence.

P. 971.

Form, p. 987.

Depositions.

P. 971.

(*b*) *Post*, p. 129.

(*bb*) (1870) L. R. 1 C. C. R. 225.

the Summary Jurisdiction Acts, and was, therefore, not required to sit in open court (*R. v. Katz (c)*); and see *R. v. Holloway (cc)*).

Deposition of
children in
certain cases.
4 Edw. 7,
c. 15, s. 15;
8 Edw. 7,
c. 67, ss. 28,
29, 30.

In certain cases, a justice is empowered to take the deposition of a child whose attendance before the court would, in the opinion of a registered medical practitioner, involve serious danger to its life or health. So, also, in certain cases, the court may receive the evidence of a child though it be not given upon oath, and such evidence when reduced into writing is deemed to be a deposition within the meaning of the Indictable Offences Act, 1848. As to the circumstances in which the depositions of children may be so taken, see title "CHILDREN," *post*, p. 380.

The taking of
the deposi-
tions.

It is of the utmost importance that the depositions should be taken with precision and accuracy, because (amongst other reasons) if the prisoner is committed for trial and the witness die, or is unable through illness to attend the trial, or is spirited away by the other side, the deposition may be used in evidence against the prisoner, at the trial (*ib. s. 17*; and cf. *R. v. Scaife (d)*). It should be remembered that if, after the close of the cross-examination of a witness for the prosecution, any further questions are put to the witness by the court or by the prosecution (other than those admissible in re-examination), the accused must have an opportunity of further cross-examination as to this additional evidence.

P. 971.

List of
exhibits.

The justices' clerk is now required, in case any person is committed for trial, to make (and forward with the depositions) a complete list of the exhibits used in evidence (see Form 33 in the Schedule to the "Criminal Procedure" Rules, 1908, *post*, p. 1214).

Taking the
deposition
of a witness
who is dan-
gerously ill.

Sometimes it happens that by reason of dangerous illness a witness cannot be examined in the regular way, and for this contingency special statutory provision is made. Whenever it may be made to appear to the satisfaction of any justice that any person *dangerously* ill, and in the opinion of a registered medical practitioner not likely to recover, cannot be examined in accordance with the provisions of 11 & 12 Vict. c. 42, s. 17 (*ante*,

(c) (1900) 64 J. P. 807; 17 T. L. R. 67.

(cc) *Post*, p. 129.

(d) (1851) 17 Q. B. 238; 20 L. J. M. C. 229; 2 Den. 281.

p. 127), but is able and willing to give material information relating to any *indictable* offence or relating to any person accused of such offence, provision is made for the taking by such justice of his or her evidence. Such evidence may be afterwards used upon the trial of any offender or offence to which it may relate if the sick person be then dead, or there be no reasonable probability that he or she will ever be able to travel or give evidence. But it must be shown that reasonable notice *in writing* (*R. v. Shurmer*) (*e*) was served upon the party (whether prosecutor or accused) against whom it is sought to be used of the intention to take the same, and that such party "had or might have had, if he had chosen to be present" (for which purpose provision is made in the case of a prisoner), "full opportunity of cross-examining the deceased person" (30 & 31 Vict. c. 35, ss. 6, 7). These sections can only be put in operation when the justice who takes the deposition is satisfied that it is not "practicable for any justice or justices of the peace to take an examination or deposition" in accordance with the provisions of the Act of 1848. It will, too, be noticed (see APPENDIX, *post*, p. 1023, where the statutory provisions are set out at length) that the Act requires the addition of a caption containing, amongst other things, a statement "of the day and place when and where" the deposition was taken; and it has been held that an omission to comply with this requirement as to the "place" is fatal to the admissibility of the deposition (*R. v. Curtis*) (*f*). In *R. v. Holloway* (*g*) a deposition, intended to be taken under this statute, was read to the witness and assented to by her as correct, but she was physically unable to make a mark upon it. Although it appeared that the statute did not apply inasmuch as it would have been "practicable" for the deposition to be taken in the ordinary way, it was, nevertheless, held to be admissible, seeing that it was taken before one of the committing magistrates and in accordance with the general provisions of the Indictable Offences Act, 1848 (s. 17; *ante*, p. 127). As to DYING DECLARATIONS, see

Deposition of witness who is dangerously ill—*contd.*

P. 1023.

(*e*) (1886) 17 Q. B. D. 323; 55 L. J. M. C. 153.

(*f*) (1904) 21 T. L. R. 87.

(*g*) (1901) 65 J. P. 712.

post, p. 742; and as to depositions taken at an *inquest*, see *post*, p. 148.

Hearing
before court
differently
constituted:
Bottomley's
case.

In one case, after a partial hearing with a view to committal, the examining magistrate being taken seriously ill, it was proposed to re-swear, before another magistrate, the witnesses who had already given evidence (or such of them as the magistrate might consider necessary) and to read over to each of such witnesses the deposition already sworn, instructing him to correct any inaccuracy, and, of course, giving liberty to counsel further to examine and cross-examine. This procedure amounted to extracting the testimony by means of long leading questions, or rather by putting the answer into the witness's mouth; but the court refused to interfere, leaving it to the magistrate to exercise his discretion in the matter. The decision seems to be based on the view that such a course is not contrary to law, inasmuch as a judge or magistrate has full discretionary power to relax the general rule by permitting a witness to be asked leading questions on examination in chief (*Ex parte Bottomley and Others*) (*gg*). But, of course, it is in no wise competent for one magistrate to act upon evidence given before another magistrate; and it is presumed that this discretionary power should be exercised only when the ends of justice or public convenience plainly demand it—as when a witness is manifestly hostile or his evidence lengthy and of slight materiality. The objections to such a departure from the usual method of examining witnesses are forcibly exposed in the judgment of *Wills, J.*, in *Re Guerin (h)*.

Where court
thinks no
primâ facie
case made
out.

P. 979.

P. 1040.

If, after hearing all the evidence for the prosecution, the court is of opinion that it is not sufficient to put the accused upon his trial for *any* indictable offence, the latter is entitled to his *discharge* (11 & 12 Vict. c. 42, s. 25). But this is not equivalent to an *acquittal* after trial on indictment, as would be the case if the court had assumed the power to deal with the matter summarily and dismissed the information (42 & 43 Vict. c. 49, s. 27); on the contrary, in the event of the discovery of further

(*gg*) [1909] 2 K. B. 14; 78 L. J. K. B. 547; 25 T. L. R. 371; 73 J. P. 246.

(*h*) (1888) 58 L. J. M. C. 42; 60 L. T. 538.

evidence, the accused may again be called upon to answer the charge. It seems clear that the court cannot, at this stage, state a special case for the opinion of the High Court on any point of law that may be raised (see *Foss v. Best*) (*hh*). If no *prima facie* case is made out and the prisoner *discharged*, it is not necessary to take or file the depositions. Until January 1st, 1909, the court had no power to award the costs of the *defence*; but might, *in certain cases*, grant a certificate of the expenses incurred by the *prosecution* and of the amount to be allowed to witnesses in the same manner as though the accused were committed for trial. This power to allow costs extended to all cases of *felony*, when the charge was made *bonâ fide* upon reasonable and probable cause. It extended also to many *misdemeanours*. Since January 1st, 1909, the examining magistrate has been empowered to order payment of "the costs of the *prosecution* or *defence* or *both*" out of the local funds (8 Edw. 7, c. 15, *post*, p. 1078). An amount due in respect of attendance to give evidence will be paid forthwith; as to other costs, a certificate will be forwarded to the clerk of the peace for allowance at quarter sessions (*ib.* s. 3). Moreover, if the charge be not made in good faith, *in addition* to any order on the *local funds* out of which costs would be payable *primarily*, the court may order the *prosecutor* to pay the whole or any part of the costs incurred in or about the *defence* (*ib.* s. 6 (iii.), (v.)). But, if the amount exceeds 25*l.*, the prosecutor may appeal to quarter sessions (*ib.* s. 6 (iii.)). See APPENDIX, p. 1082.

Costs when justices refuse to commit.

Although the evidence should not support the original charge, the accused may be committed for *any* indictable offence which may be disclosed: the precise nature of the charge must, however, be made clear to him before the statutory caution is addressed to him (*post*, p. 143), and, if the charge is varied, he should be permitted to ask further questions of the witnesses in the event of his desiring to do so.

Committal on other than the original charge.

Where on the hearing of a charge of an *indictable* offence, the prosecution desire to abandon that charge, and proceed to allege the same facts as proof of an

Conviction on same facts for offence punishable summarily.

(*hh*) *Post*, p. 160.

offence punishable *summarily*, it is competent for the justices so to dispose of it summarily if the accused does not object or ask for an adjournment. If, however, he objects, the fresh charge should be taken down, and, if necessary, a warrant issued and executed at once, and an adjournment granted with a remand for the purpose of proceeding with the minor charge (*Turner v. Postmaster-General*) (*i*). The statutory provisions as to *variance* in indictable charges are similar to those under the Summary Jurisdiction Acts (*ante*, p. 77; 11 & 12 Vict. c. 42, s. 9).

Variance.

P. 964.

Where offence is alleged to have been committed outside the jurisdiction.

P. 975.

Form, p. 992.

P. 975.

Form, p. 993.

Special statutory provision is made for cases where the accused is charged with having committed an offence in a county or place in which the magistrate before whom the accused is brought has no jurisdiction. The magistrate must examine the witnesses and receive the evidence adduced before him, and if he thinks there is "sufficient proof of the charge," he must commit the accused to the prison of the place where the offence is alleged to have taken place, or admit him to bail. The witnesses who have given evidence, and the prosecutor also (if he has appeared), must then be bound over by recognizance. If the magistrate regards the evidence as *insufficient* to put the accused upon his trial, he is directed to bind over the witnesses, and, by warrant, order the accused to be taken before a justice of the place where the offence is alleged to have been committed, together with the information, depositions, and recognizances (11 & 12 Vict. c. 42, s. 22). The section makes special provision for the costs thus incurred (*ib.*). However, should the magistrate be satisfied that he has *the whole of the evidence* before him, and it is clear that, upon such evidence, the accused ought not to be put upon his trial, it is conceived that the magistrate ought to discharge the accused notwithstanding the absence of any express statutory direction to that effect. It is a common practice, where the offence is alleged to have been committed outside the jurisdiction, to discharge the prisoner without proceeding to examine witnesses, leaving him to be taken into custody forthwith by a constable from the district where the offence was committed.

(*i*) (1865) 34 L. J. M. C. 10; 11 L. T. 369; 13 W. R. 89.

It should be pointed out that in certain cases (viz., perjury, subornation of perjury, conspiracy, obtaining money or goods by false pretences, keeping a gambling house or a disorderly house, indecent assault, misdemeanours under the Debtors Act, 1869, or under s. 31 of the Bankruptcy Act, 1883 (*post*, p. 294), libels and offences under the Newspaper Libel Act, 1881, Merchandise Marks Act, 1887, Criminal Law Amendment Act, 1885, Children Acts, 1904 and 1908, Part II., Prevention of Corruption Act, 1906, and the Punishment of Incest Act, 1908), if the court refuses to commit, and the prosecutor desires to prefer an indictment notwithstanding, the court is bound to take the recognizance of the prosecutor to prosecute his charge or complaint, and must transmit the recognizance, information, and depositions, if any, to the court in which the indictment ought to be preferred, in the same manner as in the case of a committal for trial. If on an indictment so preferred the defendant is acquitted, the court may order the prosecutor to pay the costs of defence, and if, after requiring his recognizance to be taken as above, the prosecutor does not go on with the prosecution, the recognizances are forfeited and cannot be discharged.

It may be noted that the statute does not extend to an attempt to obtain money, &c., by false pretences (*R. v. Burton*) (*j*).

Any reference in the Costs in Criminal Cases Act, 1908, to a person "committed for trial" includes a reference to one whom a prosecutor is "bound over to prosecute" under the Vexatious Indictments Act (see *post*, p. 1083).

Should the court be of opinion that the evidence is sufficiently strong against the accused to call upon him for his defence, it is necessary in the first place to consider whether the case falls within the Summary Jurisdiction Act, 1879. If the case does fall within that Act, then the court will have to determine whether, having regard to the character and antecedents of the person charged, the nature of the offence, and all the circumstances of the case, it is expedient to give the accused an opportunity of electing to be tried summarily.

When prosecutor may insist upon being bound over to prosecute although court refuses to commit for trial.

VEXATIOUS INDICTMENTS ACT, 22 & 23 VICT. c. 17, s. 1; Newspaper Libel, &c., Act, 44 & 45 VICT. c. 60, s. 6; Merchandise Marks Act, 50 & 51 VICT. c. 28; Criminal Law Amendment Act, 48 & 49 VICT. c. 69, s. 17; Children Acts, 1904 and 1908 (4 Edw. 7, c. 15; 8 Edw. 7, c. 67); Prevention of Corruption Act, 1906, 6 Edw. 7, c. 34; Incest Act, 1908, 8 Edw. 7, c. 45.

Where court thinks *prima facie* case made out.

Local jurisdiction under S. J. Act, 1879.

P. 1050.

It will be remembered that where a person is charged with an indictable offence mentioned in the First Schedule of the Summary Jurisdiction Act, 1879, "before a court of summary jurisdiction for any county, borough, or place, and the court have jurisdiction to commit such person for trial in such county, borough, or place, *although the offence was not committed therein*, such court shall also have jurisdiction to deal with the offence summarily" (*ante*, p. 9). The court must, then, first of all consider—

Does the case fall within the Summary Jurisdiction Act, 1879?

Can the case be tried summarily?

In order to answer this question it will be necessary to decide whether the accused is *an adult*, a *young person* (*i.e.*, between fourteen and sixteen years of age), or a *child* (*i.e.*, between seven and fourteen years of age), inasmuch as different considerations apply to each of these classes of persons.

Where accused is an adult.

P. 1031.

Form, p. 1098.

I. If the accused is an *adult*, that is to say, a person who, in the opinion of the court, is sixteen years of age or upwards, the court may deal summarily with the case IF THE ACCUSED CONSENT, and if the charge is in respect of

(a) *Simple larceny*;

(b) *Obtaining*, or attempting to obtain, a chattel, money, or valuable security *by false pretences*;

(c) *Maliciously setting fire* to any part of any wood, coppice, or plantation of trees, or to any heath, gorse, furze, or fern;

(d) An offence declared by any Act to be *punishable as simple larceny*, *i.e.*, stealing, obliterating, or destroying valuable securities; stealing, or damaging with intent to steal, metal fixed to houses, gardens, or public places; stealing, or damaging with intent to steal, metal or other material fixed to buildings; stealing oysters from oyster beds; stealing, or damaging with intent to steal, shrubs, &c., in parks, gardens, &c., where value exceeds 1*l.*; stealing, or damaging with like intent, shrubs, &c., elsewhere than in parks, gardens, &c., where value exceeds 5*l.*; stealing, or damaging with like intent, trees, sapling, or

Cf. *post*, p. 1056.

Cf. *post*, p. 664.

underwood to the value of 1s. after *two* previous convictions; stealing, or damaging with like intent, plants or vegetable productions in gardens, &c., after *one* previous conviction; maliciously or fraudulently abstracting or wasting electricity; larceny by a bailee, or a member of a co-partnership, or a joint beneficial owner;

(e) Larceny from the person;

(f) Larceny as a clerk or servant;

(g) Embezzlement by a clerk or servant;

(h) Receiving stolen goods;

or (i) Aiding or abetting offences (a), (d), (e), or (f):

AND the value of the property stolen, damaged, or destroyed does NOT EXCEED FORTY SHILLINGS (42 & 43 Vict. c. 49, s. 12). Pp. 664, 1031.

To this list of offences triable summarily with the consent of the accused, the Children Act, 1908 (8 Edw. 7, c. 67), has, by s. 128, added the offence of INDECENT ASSAULT upon a *child or young person*, in the opinion of the court, under sixteen years of age, whether male or female.

If the charge is that of attempting to commit any one of the offences (a), (d), (e), or (f), the accused may be dealt with summarily, if he consent, *whatever may be the value of the property (ib.) (k)*.

If the value of the property EXCEEDS FORTY SHILLINGS, and the charge is not merely a charge of *attempting* to commit one of the offences (a), (d), (e), or (f), the court cannot deal summarily with the case unless the accused PLEADS GUILTY (42 & 43 Vict. c. 49, s. 13 (k); see *post*, p. 139). P. 1031.

There is, moreover, an important limitation on the power of the court to deal summarily with an *adult* charged with any of the offences to which reference has just been made. It is provided that, if it appears to the court that the offence is one which, *owing to a previous conviction on indictment* of the person so charged, is punishable by law with penal servitude, the court shall not deal with the case summarily in pursuance of the Act

No summary jurisdiction after previous conviction on indictment.

(k) *Quære* as to (b), where there is an *attempt* to obtain a chattel, &c., of value exceeding 40s. (cf. *post*, p. 1077).

P. 1032.

(42 & 43 Vict. c. 49, s. 14). Despite the phraseology of this section, the prohibition is not generally regarded as being limited to the rare cases in which the liability to penal servitude is "owing to" the fact of the previous conviction. If there exists a doubt as to whether or not there has been such previous conviction on indictment the court may adjourn the inquiry for further evidence. But the court is not, of course, bound to adjourn the inquiry; and in the absence of *legal* proof by production of the record of the conviction or a duly authenticated certificate, accompanied by evidence identifying the accused with the person referred to in the conviction, the case may (with the consent of the accused) be disposed of in a summary manner.

Where
accused is a
young
person.

Pp. 1030, 1076.

Form,
pp. 1098, 1144.

II. If the accused is a *young person*, that is to say, one who, in the opinion of the court, is of the age of fourteen years, but not of the age of sixteen years, the court may deal summarily with the case if the accused consent, and if the charge is in respect of *any indictable offence other than homicide* (42 & 43 Vict. c. 49, s. 11, as amended by 62 & 63 Vict. c. 22, s. 2). It will be observed that in the case of young persons, who consent to summary trial, as distinguished from adults, there is *no limitation as to the value of the property* forming the subject-matter of the charge.

We have already seen (*ante*, p. 121) the provisions now made to secure the attendance at the court of the parent or guardian of the young person accused (FORMS, pp. 1140, 1141).

When
accused is a
child.

Form,
pp. 1098, 1144.

III. If the accused is a *child*, that is to say, a person who is, in the opinion of the court, more than seven years of age but less than fourteen years of age (*l*), the court may deal summarily with the case where the charge is for *any indictable offence except homicide*, provided that the parent or guardian of the child, when informed by the court of his right to have the child tried

(*l*) *N.B.*—A child under seven years of age cannot under any circumstances be held to be criminally responsible for his acts. If he is between seven and fourteen, the prosecution may tender evidence to rebut the presumption that he is *doli incapax* (unless the charge be rape).

by a jury, *does not object* to the child being dealt with summarily. The word "guardian" in this connection includes any person who, in the opinion of the court, has for the time being the charge of or control over the child (42 & 43 Vict. c. 49, ss. 10, 49).

We have already seen (*ante*, p. 121) the provision that is made to compel the attendance at the court of the parent or guardian of the accused child.

Assuming that the court is a *petty sessional* court, sitting on a day appointed for the hearing of indictable offences (*ante*, p. 11), and has come to the conclusion that the case is one which justices have power to dispose of summarily, and that under the circumstances it would be expedient for them to exercise that power, the court may, *at any time during the hearing*, cause the charge to be reduced into writing and read to the accused, or, if the accused is a child, to the parent or guardian of the child.

If the court proposes to deal summarily with a charge of *obtaining money, &c.*, by *false pretences* with intent to defraud, the court *must*, after the charge has been reduced to writing and read to the accused, *state in effect that a false pretence means a false representation by words, writing, or conduct that some facts exist or existed, and that a promise as to future conduct not intended to be kept is not by itself a false pretence*, and may add any such (*m*) further explanation as the court may deem suitable to the circumstances (62 & 63 Vict. c. 22, s. 3). A similar course should, we presume, be adopted when the charge is that of *attempting to obtain by false pretences*, although the Act is silent on the point.

The court should then address the accused as follows:—

"Do you desire to be tried by a jury or do you consent to the case being dealt with summarily? That is, do you wish this court to try the case and give judgment upon it, or do you wish the case to be tried by a jury at the next [quarter sessions or assizes, as the case may be] to be held in and for the of ?"

If the accused is a child, the court should address the parent or guardian (not the child) as follows:—

"Do you desire the child to be tried by a jury, and object to the case being dealt with summarily? That is,

Pp. 1029, 1052.

Forms 1 and 2, pp. 1140, 1141.

Procedure where court determines to give the accused the option of a summary trial.

Explanation of "false pretences."

P. 1076.

Option of trial by jury.

(m) Cf. *post*, p. 465.

Option of
trial by jury
—*contd.*

do you wish this court to try the case and give judgment upon it, or do you wish the case to be tried by a jury at the next [quarter sessions or assizes, as the case may be] to be held in and for the of ?”

If the accused elects to be tried summarily, he should then be asked whether he pleads “guilty” or “not guilty” to the charge. If he pleads “guilty,” the court, before passing sentence, should ask the accused if he has any cause to show why sentence should not be passed upon him.

If he pleads “not guilty,” the accused will then be called upon for his defence; and, after the court has assumed power to deal summarily with the case, the proceedings will be precisely the same as though the offence were one punishable on summary conviction, and not on indictment, and the provisions of the Summary Jurisdiction Acts will become applicable (42 & 43 Vict. c. 49, s. 27). So that the justices may, *e.g.*, order either of the parties to pay *costs* under s. 18 of the Summary Jurisdiction Act, 1848; and see *post*, p. 139, and 8 Edw. 7, c. 15, ss. 1, 6, *post*, pp. 1078, 1081. As to the powers of the court in respect of *restitution* of property and the like, see *post*, p. 195.

Form, p. 1098.
P. 1039.

The evidence of witnesses already taken need not be taken again, but the defendant may require any witness to be recalled for the purpose of further cross-examination (42 & 43 Vict. c. 49, s. 27 (ii.)).

P. 1040.
Dismissal of
information
after trial.

If the court dismiss the information, the justices must, if required, deliver to the accused a certificate of dismissal, which will have the same effect as an acquittal had the accused been tried on indictment for the offence (42 & 43 Vict. c. 49, s. 27 (iv.)).

P. 1040.

The order of dismissal must be transmitted to and filed by the clerk of the peace, together with the written charge, the depositions of the witnesses and the statement, if any, of the accused (*ib.* s. 27 (vi.)).

P. 1040.

Conviction on
summary
trial.

If the court find the accused to be guilty of the offence charged against him, the conviction must contain a statement, in the case of a child, as to the consent or otherwise of his parent or guardian, and, in the case of any other person, of the consent of such person, to be tried by a court of summary jurisdiction (*ib.* s. 27 (v.)). This conviction will then be transmitted and filed with

P. 1040.

depositions and other documents, as in the case of an order of dismissal (*ib. s. 27 (vi.)*).

Whether the information be dismissed or the accused be convicted, provision was made by the Summary Jurisdiction Act, 1879, to enable the court, if so minded, to grant to the prosecutor a certificate of the amount of compensation which the court might deem reasonable for his *expenses, trouble, and loss of time*, subject to regulations to be made from time to time by the Secretary of State (Offic. & Parl. Publ. 1896, April: 42 & 43 Vict. c. 49, s. 28). And since January 1st, 1909, the court has been empowered to order payment of the costs of the *prosecution or defence or both* "out of the local funds" (8 Edw. 7, c. 15, s. 1, *post*, p. 1078). Moreover, *in addition* to any order on *local funds* out of which the costs would be payable *primarily*, the court by or before which any person is convicted of an indictable offence may (beyond any other punishment) order the person convicted to pay the whole or any part of the costs of the prosecution and conviction (*ib. s. 6*). As to enforcing payment, see ss. 3, 6 (iv.), (v.), *post*, pp. 1079, 1082. The costs to be paid out of "local funds" must be ascertained as soon as practicable, and (if the amount is due for travelling or personal expenses in respect of a witness's attendance to give evidence) must be paid *forthwith*. So far as the amount is not due in respect of attendance to give evidence, a certificate must be sent, in case of committal, to the officer of the court to which the defendant is committed, and, in any other case, to the clerk of the peace (*post*, pp. 1079, 1127).

As to the allowance of a fee to the solicitor for the prosecution, see 73 J. P. 625.

*Plea of GUILTY where value of property EXCEEDS
FORTY SHILLINGS.*

Special notice must be taken of the case in which an *adult* may be dealt with summarily on a charge made in respect of any one of the offences already specified under headings (a), (b), (c), (d), (e), (f), (g), (h), (i), *ante*, p. 134, *where the value of the property forming the subject-matter of the charge EXCEEDS FORTY SHILLINGS and the accused pleads guilty* (42 & 43 Vict. c. 49, s. 13).

P. 1040.

Power to
grant costs.

P. 1040.

Form, p. 1127.

Summary trial of adult on *plea of guilty* for larceny, &c., of property exceeding 40s. in value.
P. 1031.

Form, p. 1098.

If, during the hearing of such a charge, the court come to the conclusion that it would be expedient to deal with the case summarily, and that the accused, if guilty, might be adequately punished under the powers conferred by the Summary Jurisdiction Act (that is to say, by a punishment which could not exceed in severity six months' imprisonment with hard labour), the court may give the accused an opportunity of pleading guilty and being so dealt with. The court, if desirous of affording this opportunity, should address the accused as follows (n):—

Caution to
adult where
value
EXCEEDS 40s.

“ It is my duty, before asking you whether you are guilty or not, to explain to you that you are not obliged to plead or answer. If you plead guilty you will be dealt with summarily; that is, this court will proceed to pass sentence upon you. If you do not plead or answer, or if you plead not guilty, you will be dealt with in the usual course, that is, you will be committed for trial at the next quarter sessions, to be held in and for the of . You are not obliged to say anything unless you desire to do so, but whatever you say will be taken down in writing, and may be given in evidence against you upon your trial; and I give you clearly to understand that you have nothing to hope from any promise of favour, and nothing to fear from any threat which may have been held out to you to induce you to make any admission or confession of your guilt, but whatever you now say may be given in evidence against you upon your trial, notwithstanding such promise or threat. I now ask you whether you are guilty or not? ”

P. 1032.

If the accused then plead guilty, the court may (as we shall see, p. 142) direct him to be imprisoned, with or without hard labour, for any term not exceeding SIX MONTHS.

Punishment of indictable offences tried summarily.

Punishment
of indictable
offences tried
summarily.

Assuming that the court has undertaken to deal summarily with the case, and has, after trial, found the accused *guilty*, it will then become necessary to consider what are the limits of the *punishment* which can be

(n) As to the caution where the charge is that of *obtaining goods, &c.*, by *false pretences* see *ante*, p. 137.

imposed (*nn*). As to ordering payment of *costs*, see *ante*, p. 139.

The following *general* statutory provisions as to punishment which we have seen to be applicable in non-indictable cases, would appear to apply also to indictable cases tried summarily:—

- (a) Power, under the Probation of Offenders Act, 1907 (*ante*, pp. 101, 102 *et seq.*), to make an order, General provisions.
WITHOUT PROCEEDING TO CONVICTION, either—
 - (i.) *Dismissing* the information; or Form, p. 1102.
 - (ii.) Discharging the offender *conditionally on his entering into a recognizance*, with or without sureties, to be of good behaviour and to appear for conviction and sentence when called on at any time during such period, *not exceeding three years*, as may be specified in the order. For provisions as to payment of damages, compensation, costs, &c., see *ante*, p. 101.
- (β) Power to make a *probation order* under the Act last cited, *i.e.*, an order requiring that there shall be *inserted in the recognizance a condition* that the offender be *under the supervision of a named person* during the period specified in the order. Form, p. 1103.
- (γ) Power to allow time for payment of fines, to permit payment by instalments, or to afford the accused an opportunity of giving security for the payment (see p. 112). Cf. Form, p. 1096.

Having referred to these *general provisions*, we proceed to consider separately the cases of (i.) adults, (ii.) young persons, and (iii.) children, who may all, as we have seen, be dealt with summarily, but under different conditions.

- (i.) ADULTS (except where there is a plea of guilty and the value of the property exceeds forty shillings).—IMPRISONMENT, with or without hard labour, for a term *not exceeding THREE MONTHS*; or fine *not exceeding 20l.* The fine is recoverable by distress, and in default, imprisonment *without hard labour* according to scale (p. 111). Adults. P. 1031.

For *indecent assault* on a *young person* the maximum term of imprisonment is *six months*, see

(*nn*) *The court may consider other cases if admitted by defendant* (*R. v. Syers* (1909), 73 J. P. 13).

Punishment
on summary
trial—*contd.*

post, p. 288. The maximum *fine* would appear to be 20*l.* (42 & 43 Vict. c. 49, s. 12; 8 Edw. 7, c. 67, s. 128).

On a *plea of guilty* where the value of the property *exceeds forty shillings*, the maximum punishment is imprisonment, with or without hard labour, for a term *not exceeding six months*; and, in this special case, as we have already pointed out, a fine cannot be substituted for imprisonment (see p. 107).

Young
persons.

P. 1030.

Form 8,
p. 1144; and
see *ante*,
p. 121.

(ii.) **YOUNG PERSONS, *i.e.*, juveniles between fourteen and sixteen.**—IMPRISONMENT, with or without hard labour, for a term *not exceeding three months*; or fine *not exceeding 10*l.** The fine is recoverable by distress, and, in default, imprisonment *without hard labour* according to scale (see p. 111).

By ss. 102 (iii.), 112, of the Children Act, 1908 (8 Edw. 7, c. 67), it is provided that a young person shall not be sentenced to imprisonment, or committed in default of payment of a fine, damages, or costs, unless the court certifies that the young person is of so unruly a character that he cannot be detained in a "place of detention" provided under the Act, or that he is of so depraved a character that he is not a fit person to be so detained. This applies to all proceedings on or after January 1st, 1910.

Children.

Form 7,
p. 1144; and
see *ante*,
p. 136.

Pp. 1029, 1026.

(iii.) **CHILDREN under fourteen years of age.**—The Summary Jurisdiction Act, 1879 (s. 10), provides that the court may inflict the same *description* of punishment as if the child had been tried on indictment; and, as we have seen, the section (s. 4) which enables a fine to be substituted for imprisonment, does not apply in this case (see p. 107). But the Children Act, 1908 (8 Edw. 7, c. 67, ss. 102 (i.), 112), prohibits the imprisonment of children for any offence whatsoever (where proceedings take place on or after January 1st, 1910); and the Summary Jurisdiction Act of 1879 further limited the punishment by prescribing that where a fine is imposed it must not exceed forty shillings, though, having regard to the wording of the statute, it is not easy to conceive many cases in which a fine could be imposed. As to the sub-

Cf. *ante*,
p. 121.

stitution of custody in a "place of detention" where a child or young person is convicted of an offence punishable with penal servitude or imprisonment, or is liable to be imprisoned in default of payment of a fine, damages, or costs, see 8 Edw. 7, c. 67, ss. 106, 112, 113, and *ante*, p. 122.

If the child is a *male*, the court may also, in addition to, or instead of any other punishment, direct that the child be privately whipped with *not more than six strokes of a birch rod* (42 & 43 Vict. c. 49, s. 10). Under the Act last cited a juvenile between twelve and fourteen years of age might be whipped with not more than TWELVE strokes (*ib.* s. 11 (i)). But, since April 1st, 1909, it would seem that the punishment must not in any case exceed six strokes (8 Edw. 7, c. 67, Schd.).

[NOTE.—The above punishments of young persons and children are without prejudice to the rights of the court to send the young person or child to a reformatory or industrial school (42 & 43 Vict. c. 49, ss. 10 (iv.), 11 (iii.)). And as to the power to send to reformatories or industrial schools, see pp. 181, 189. It will also be remembered that the provisions of the Probation of Offenders Act and of the Children Act, 1908, are applicable.]

As to the liability of a *parent* or *guardian*, and as to commitment to a "place of detention," see *ante*, pp. 102, 121, 122.

Cases outside the Summary Jurisdiction Act, 1879.

If the court have no power to deal summarily with the case or if they do not wish to do so, when the accused has been charged, the court should address him as follows:—

"*Having heard the evidence, do you wish to say anything in answer to the charge? You are not obliged to say anything unless you desire to do so; but whatever you say will be taken down in writing, and may be given in evidence against you upon your trial; and I give you clearly to understand that you have nothing to hope from any promise of favour, and nothing to fear from any threat which may have been holden out to you to induce you to make any admission or confession of your guilt, but that whatever you shall now say may be given in evidence against you, notwithstanding such promise or threat.*"

Whipping of male child under fourteen.

Pp. 1029, 1030.

Pp. 1030, 1031.

Where case is not to be dealt with summarily.

Caution to the accused.

Any statement that the accused may desire to make should then be taken down in writing and read over to him, and be signed by the magistrate. This statement should be kept with the depositions of the witnesses, and transmitted with them to the clerk of the peace (11 & 12 Vict. c. 42, s. 18). These provisions are in no way affected by the Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36, s. 1 (h)). It should be noted that, if the accused "reserves his defence" in such circumstances as to preclude an investigation of the case set up by him at the trial, the prosecution will be entitled to make adverse comment on this fact (*R. v. McNair*) (*n*₃).

P. 972.

P. 1074.

Witnesses for
the defence.

The court must then demand of the accused whether he desires to call witnesses. If he does so desire, and proceeds to give evidence himself or to call witnesses, the depositions must be taken in a manner similar in all respects to that pursued in the case of the witnesses for the prosecution, and all the provisions of the Indictable Offences Act, 1848, "relating to the summoning and enforcing the attendance and committal of witnesses, and binding them by recognizance and committal in default and for giving the accused person copies of the examinations," will apply to these witnesses for the defence (30 & 31 Vict. c. 35, ss. 3, 4). Justices should do nothing to discourage the accused from calling his witnesses at this stage (*R. v. Hendry*) (*o*). The statement of the accused or, indeed, any evidence he may give on oath, will be afterwards admissible against him on his trial before a jury (*R. v. Bird*) (*oo*).

P. 1022.

P. 979.

Committal for
trial.

If, after hearing all such evidence as tends to prove the guilt or innocence of the accused, or to rebut the charge that is made, the court is of opinion that it is not sufficient to put the accused upon his trial for *any* indictable offence, he will be at once *discharged*: as to the incidents and consequences of such a *discharge*, see *ante*, p. 130. But it is not the function of the magistrate or the court to *try* the case (*R. v. Carden*) (*p*); and, if the "evidence is sufficient to put the accused party upon his

(*n*₃) (1909) 25 T. L. R. 228.(*o*) (1909) 25 T. L. R. 635.(*oo*) (1898) 79 L. T. 359; 62 J. P. 761.(*p*) (1879) 5 Q. B. D. 1; 49 L. J. M. C. 1; 44 J. P. 119, 137;
41 L. T. 504.

trial for an indictable offence, or, if the evidence given raise a strong or probable presumption of the guilt of the accused," whatever may be the view that the magistrate or individual members of the court take as to the probable result of the trial, the accused should be committed for trial to the assizes or sessions (as the case may be, having regard to the nature of the offence) (11 & 12 Vict. c. 42, s. 25). It is provided by the Assizes Relief Act, 1889, that, *if the offence is triable at quarter sessions*, the justice or justices, unless for "special reasons" he or they think fit otherwise to direct, must bind over the prosecutor to attend at quarter sessions. In such cases a court of oyer and terminer or general gaol delivery is not required to deliver the accused person from gaol in the absence of an express order by the High Court of Justice (52 & 53 Vict. c. 12). When notices have been given, under the Assizes and Quarter Sessions Act, 1908, dispensing with the attendance of jurors at any particular assizes or sessions where there is *no business* for them to transact, justices may commit a prisoner *not admitted to bail* to assizes or sessions "about to be held at any place or town convenient for the trial." There is, too, power to alter existing committals (8 Edw. 7, c. 41, s. 1). When a prisoner is so committed, the justices' clerk must transmit the depositions, recognizances, and other documents to the proper officer of the court to which the committal has taken place, and the incidents of the trial will be the same "as though the offence charged had been committed in the county, city, or place for which the court is held" (Order in Council, No. 723, L. 23, 1909). As to supplying the defendant with *copies* of the depositions, see *post*, p. 980.

Committal for trial—*contd.*

P. 979.

Form, p. 995.

Assizes and Quarter-Sessions Act, 1908.

Sometimes, even if the court decide not to commit, the prosecutor may insist on being bound over to prosecute the charge before a jury. We have already adverted to the provisions of the Vexatious Indictments Act, the Newspaper Libel Act, the Merchandise Marks Act, the Criminal Law Amendment Act and other statutes in this connection (*ante*, p. 133).

On committal, the prosecutor is bound by recognizance to prosecute, and the witnesses for the prosecution, as well as those witnesses for the defence, who (not being merely witnesses as to character), in the opinion of the

Committal for trial—*contd.*

Pp. 973, 1022.

Forms,
pp. 988, 989.

court, gave material evidence or tended to prove the innocence of the accused, should also be bound in recognizances to attend and give evidence at the trial (11 & 12 Vict. c. 42, s. 20; 30 & 31 Vict. c. 35, s. 3). The court was thus enabled, at the hearing, to allow the expenses of these witnesses for the defence as well as of those called for the prosecution (30 & 31 Vict. c. 35, s. 5); but now there is a general power to direct payment of the costs of the defence (see 8 Edw. 7, c. 15, *post*, p. 1079). If a witness refuse to enter into such recognizance he may be committed to gaol until the trial, or until he thinks fit to enter into the recognizance. The recognizances may be taken out of court under the provisions of s. 42 of the Summary Jurisdiction Act, 1879 (*post*, p. 1048). As to the committal of *young persons* under sixteen years of age, see *ante*, p. 80. For the provisions as to the payment of *costs* directed to be paid out of "local funds," see *ante*, p. 131, and *post*, pp. 1079, 1080, 1127.

Bail.

P. 977.

Forms, p. 993.

In some cases, upon committal for trial, the accused was, until January 1st, 1909, entitled as of right to be *admitted to bail*. In most cases, however, the court had a discretion as to admitting the accused to bail. This discretion existed in all cases of *felony* (except treason), and, also, in all cases of *misdemeanour* where the costs of the prosecution might be allowed out of the county rate. Such allowance may now be made in *all cases*, *post*, p. 166.

Conveyance to gaol.

Forms, p. 996.

The regulations for conveying to gaol persons who have been committed for trial, as well as the provisions for the payment of the costs of conveyance, are contained in s. 26 of the Indictable Offences Act, 1848 (*post*, p. 979).

Poor Prisoners' Defence Act, 3 EDW. 7, c. 38.

By the Poor Prisoners' Defence Act, 1903, provision is made for the grant of legal aid to a poor prisoner whose means are insufficient to enable him to obtain it otherwise. Committing justices may give a certificate under this Act when it appears, "having regard to the nature of the defence set up by any poor prisoner as disclosed in the evidence given or statement made by him, that it is desirable, in the interests of justice, that he should have legal aid in the preparation and conduct of his defence" (3 Edw. 7, c. 38). As to the allowance of costs, see the REGULATIONS of December 30th, 1903: there may (*inter alia*) be allowed "to the clerk to the justices or other person by whom a copy of the *depositions* is

supplied to the prisoner's solicitors, payment for the same at the rate of twopence per folio of 90 words." And see Rules of May 13th, 1904, and Home Office Circulars, August 31st, 1904, and April 28th, 1905; see, also, "Costs in Criminal Cases Act, 1908" (8 Edw. 7, c. 15, s. 1 (iii.)); cited in APPENDIX, p. 1079.

A statement in the nature of a *confession* cannot be received in evidence unless it was *free and voluntary*. If it proceeded *from hope or fear excited by a person in authority*, it is inadmissible, and, in case of doubt, it is the duty of the prosecution to prove that the statement was *in fact* free and voluntary (*R. v. Thompson*) (*q*). Observe, however, that the confession does not become inadmissible unless the inducement, threat, or promise proceeded from a *person in authority*—i.e., the prosecutor, an officer of justice having the prisoner in custody, a magistrate, or other person in a similar position (cf. *e.g.*, *R. v. Rose*) (*r*). And the prisoner's master is *not* such a person if the crime was not committed *against him*, as, *e.g.*, in case of child murder or concealment of birth by a servant (Stephen's "Digest of Law of Evidence," 7th edit., art. 22). The mere absence of a "caution" will not make the reply to a question by a constable, or other person in authority, inadmissible, where no inducement or threat is held out (*Rogers v. Hawken*) (*s*). And the fact that the prisoner was in custody when he made a statement in reply to the question of a constable does not of itself render the statement inadmissible (*R. v. Best*) (*ss*). If, however, a constable holds a warrant for a man's arrest, or has finally resolved to take him into custody, he ought not to address questions to him. It is in the discretion of the court to admit or reject answers given under such circumstances; but a prisoner or person about to be taken into custody ought not to be cross-examined by the police (see per *Hawkins, J.*, in *R. v. Histed*) (*t*).

Admissibility of *confessions* by accused persons.

A statement made in the presence of an accused person is not necessarily evidence against him. Such statement

Statements made in the presence of an accused person.

(*q*) [1893] 2 Q. B. 12; 41 W. R. 525.

(*r*) (1898) 67 L. J. Q. B. 289; 78 L. T. 119.

(*s*) (1898) 67 L. J. Q. B. 526; 78 L. T. 655; 62 J. P. 279.

(*ss*) [1909] 1 K. B. 692; 78 L. J. K. B. 658; 100 L. T. 622; 25 T. L. R. 280.

(*t*) (1897) 19 Cox, 16.

is not admissible unless there was an assent by him to its truth, or no dissent where dissent might reasonably have been expected. And, on the trial of a man for attempting to procure abortion, when it appeared that a statement made by the woman to the police was afterwards read over to the accused, this course was condemned by *Hawkins, J.*, as "highly objectionable" (*R. v. Smith*) (*u*).

It appears to be a question for the jury whether the circumstances were such that the accused might reasonably be expected to make some reply, and (if he remained silent) whether his silence amounted to an admission of any part of the statement or could be otherwise accounted for. And cf. *Worth v. Brown*, cited *post*, p. 630. In a very recent case, the court seems to have refused to lay down any general rule as to the right of constables to read statements to prisoners in this way (*R. v. Bromhead*) (*x*).

Admissibility
of deposition
taken at an
inquest.

In a recent trial for murder, the prisoner had been present at the coroner's inquest, and had been represented there by a solicitor who had cross-examined a certain witness. The deposition as taken by the coroner contained statements made to the witness in the absence of the prisoner. This witness having died before the trial, *Grantham, J.*, admitted the deposition in evidence, excluding the portions amounting to hearsay. The learned judge held that the admissibility of the deposition depended on the common law and was in no way governed by 11 & 12 Vict. c. 42, s. 17 (*R. v. Cowle*) (*y*).

P. 971.

(*u*) (1897) 18 Cox, 470 ; 61 J. P. 120.

(*x*) (1907) 71 J. P. 103.

(*y*) (1907) 71 J. P. 152.

CHAPTER V.

AS TO CERTAIN SPECIAL MATTERS.

AIDERS AND ABETTORS — ACCESSORIES — APPEAL — APPEAL BY SPECIAL CASE — ATTEMPTS — BAIL — COMPOUNDING OFFENCES — EVIDENCE OF PARTIES: THEIR HUSBANDS AND WIVES — EXTRADITION — INDUSTRIAL AND REFORMATORY SCHOOLS — RECOGNIZANCES — RESTITUTION OF STOLEN PROPERTY AND COMPENSATION FOR LOSS OCCASIONED BY FELONY — SEARCH WARRANTS — PRISON ACT.

Aiders and Abettors.

EVERY person who aids, abets, counsels, or procures the commission of an offence *punishable on summary conviction* is rendered liable to be proceeded against and convicted, either together with the principal offender, or before or after his conviction (11 & 12 Vict. c. 43, s. 5; and cf. *Barratt v. Burden*) (*a*). In the event of a conviction for aiding and abetting, the defendant may receive the same punishment as that which could have been imposed on the principal offender; indeed, the abettor may be proceeded against in every respect as though he were a principal offender (*Benford v. Sims*) (*b*). Mere tacit acquiescence in the commission of an offence punishable on summary conviction is not, in itself, an offence; but the *owner* of a motor car, who “aids and abets” the actual driver in contravening the Motor Acts, by *allowing* the car to be driven improperly, may be convicted as a principal (*Du Cros v. Lambourne*) (*c*). So, in a much earlier case, the driver of a conveyance stopped it on the road, his companion alighted, went into an adjoining field and shot a hare. On returning to the conveyance, the

Aiding and abetting offences punishable summarily.
P. 1001.

(*a*) (1893) 10 R. 602; 63 L. J. M. C. 33; 57 J. P. 772.

(*b*) [1898] 2 Q. B. 641; 14 T. L. R. 424; 67 L. J. Q. B. 655; 78 L. T. 718.

(*c*) [1907] 1 K. B. 40; 76 L. J. K. B. 50; 95 L. T. 782; 5 L. G. R. 120; 70 J. P. 525; 23 T. L. R. 3.

Aiding and abetting offences punishable summarily—*contd.*

hare was given to the driver and the two men drove off together. The driver was held to be rightly convicted of "aiding and abetting" in the trespass. If the offence had been a felony, the driver would have been an accessory thereto; and "I think," said *Willes, J.*, "the facts, therefore, are sufficient to constitute him a principal where the offence is a misdemeanour and the distinction between principal and accessory does not exist" (*Stacey v. Whitehurst* (d)). As to "aiding and abetting" the publication of obscene and indecent photographs by the insertion (in a newspaper controlled by the defendant) of notices advertising their sale, see *R. v. De Maruy*, cited *infra*. But mere *negligence* on the part of a veterinary surgeon, in making an examination and giving a certificate that unsound meat was in fact sound, is not sufficient to justify his conviction for "aiding and abetting" the owner in exposing such meat for sale, although the negligence caused the exposure (*Callow v. Tillstone*) (e). Proceedings may be instituted either in the place where the principal offender could himself be tried, or in the place where the "aiding and abetting" occurred; and it is worthy of note that both the principal and the abettor may be charged in the same information (11 & 12 Vict. c. 43, s. 5). Although an aider and abettor may be convicted irrespective of any consideration as to the institution of proceedings against the principal, yet the principal offence *must have been actually committed*. The section does not cover the case of *inciting* to the commission of an offence punishable on summary conviction where the offence is not in fact committed. If the offence were an *indictable* crime, the mere *inciting* to its commission would in itself be a misdemeanour (*R. v. Higgins* (f)); *R. v. Gregory* (g)).

See *cf. Provincial Motor Co. v. Dunning*, *post*, p. 736.

P. 1001.

Inciting to the commission of crime.

Aiding and abetting felonies or misdemeanours.

In the case of an *indictable* felony or misdemeanour, everyone is a principal who (i.) *actually commits* the offence, or (ii.) *aids or abets* its actual commission, though aiders and abettors are sometimes described as principals in the second degree. As to what amounts to "aiding

(d) (1865) 34 L. J. M. C. 94; 11 L. T. 710.

(e) (1900) 83 L. T. 411; 64 J. P. 823.

(f) (1801) 2 East, 5.

(g) (1867) L. R. 1 C. C. R. 77.

and abetting," see *R. v. Taylor* (*h*) and *R. v. Coney* (*i*); cases which deal with the responsibility of persons concerned in or witnessing prize-fights. See, too, *R. v. De Marny* (*j*) where the defendant inserted in a newspaper, of which he was the editor, advertisements which, though not obscene in themselves, related as he knew to the sale of obscene books and photographs. It is not an offence merely to witness a crime without trying to prevent it; but, if several persons join in executing a common criminal purpose, "each is a principal in the second degree, in respect of every crime committed by any one of them in the execution of that purpose," though not in respect of the commission of a crime which is "foreign to the common criminal purpose" (Stephen's "Digest of Criminal Law," 6th edit., arts. 38, 39).

Aiding and
abetting
indictable
offences—
contd.

Anyone who *counsels* or *procures* the commission of a misdemeanour is liable to be tried, indicted, and punished as a principal (24 & 25 Vict. c. 94, s. 8); and this is so, also, if the offence "counselled or procured" is a felony (24 & 25 Vict. c. 94, s. 1); but, in the latter case, the offender is known as "an accessory *before* the fact," and may be indicted as such accessory, together with the principal or after his conviction; or he may be indicted for a substantive felony, whether the principal has or has not been convicted (24 & 25 Vict. c. 94, s. 2).

The expression "accessory *after* the fact" is applicable only in cases of felony, and it is applied to anyone who receives or assists the felon with knowledge of his crime, and with the view of enabling him to escape justice. The offender may be indicted as such or for a substantive felony punishable generally with two years' hard labour, and, in cases of murder, with penal servitude for life (24 & 25 Vict. c. 94, ss. 3, 4). But a *married woman* who, with the knowledge that her *husband* has committed a felony, receives and assists him, cannot be convicted as an accessory after the fact.

Accessories
after the fact.

Each of the various Criminal Law Consolidation Acts

(*h*) (1875) L. R. 2 C. C. R. 147; 44 L. J. M. C. 67.

(*i*) (1882) 8 Q. B. D. 534; 46 J. P. 404.

(*j*) [1907] 1 K. B. 388; 76 L. J. K. B. 210; 96 L. T. 159; 23 T. L. R. 221; 71 J. P. 14.

of 1861 (the Larceny Act, the Malicious Injuries to Property Act, the Forgery Act, the Coinage Act, and the Offences Against the Person Act) contains special clauses dealing with accessories.

Evidence of
an accom-
plice.

A magistrate has, of course, no authority to promise a pardon to an accomplice who wishes to save himself by giving evidence against his companion in crime. If without his testimony there would not be sufficient evidence to justify a commitment, the accomplice may be discharged (if in custody) and sworn as a witness, and it should then be explained to him that he is not bound to incriminate himself. If, however, a *prima facie* case can be made out without his testimony, he should be committed for trial in the usual manner; and in case his evidence seems necessary to ensure a conviction, the magistrate should direct that the fact be mentioned at the assizes or quarter sessions before the bill is submitted to the grand jury. It would appear from the observations of *Patteson, J.* (in *R. v. Beardmore*) (*k*), that, if a committal takes place on the evidence of an accomplice, the accomplice should himself be committed and not admitted to bail. But it is believed that, in practice, this rule is not rigidly observed. At the assizes or quarter sessions, as the case may be, it will be in the discretion of the court to allow the accomplice to be examined as a witness upon the bill, although he would not by thus giving evidence acquire any *legal* right to a pardon for his own crime. A jury might, in theory, act on the unconfirmed testimony of an accomplice, but it is usual in practice for the judge to advise them not to convict on his unsupported evidence, and the judge ought to do so (*R. v. Tate* (*l*); *In re Meunier* (*m*); *R. v. Everest* (*mm*)).

A "police spy" is not to be treated as an "accomplice" (*R. v. Bickley*) (*m₃*); and, where a woman attempted to pawn a watch at the request of the prisoner indicted for the larceny of the watch, it was held that

(*k*) (1836) 7 C. & P. 497.

(*l*) [1908] 2 K. B. 680; 77 L. J. K. B. 1043; 99 L. T. 620.

(*m*) [1894] 2 Q. B. 415; 63 L. J. M. C. 198.

(*mm*) (1909) 73 J. P. 269.

(*m₃*) (1909) 53 S. J. 402; 73 J. P. 239.

this circumstance alone did not constitute her an “accomplice” (*R. v. Kirkham*) (*m*₄).

Evidence of accomplice
—*contd.*

Appeal.

As a general rule there is no right of appeal to quarter sessions against a conviction or order of a court of summary jurisdiction unless such be specially conferred by the statute under which the conviction takes place or the order is made. Moreover, the right must be the subject of express enactment, and not left to inference or implication from mere general words (*R. v. Hanson*) (*n*). But, by the Summary Jurisdiction Act, 1879, the privilege of appeal has been extended to *all cases* in which a defendant, who does not plead guilty, is adjudged, “in pursuance of any Act, whether past or future,” by the conviction or order of a court of summary jurisdiction to be IMPRISONED WITHOUT THE OPTION OF A FINE. This general right of appeal does not, however, apply where the imprisonment has been adjudged for failure to comply with an order for the payment of money, for the finding of sureties, for the entering into a recognizance, or for the giving of a security (42 & 43 Vict. c. 49, s. 19). And, as the words of the section are “in pursuance of any Act, whether *past or future*,” there is not any right of appeal to quarter sessions when the accused consents to be dealt with summarily for an *indictable* offence under the Summary Jurisdiction Act, 1879 (see *ante*, pp. 134—139; *R. v. JJ. of London*) (*o*). Nor does the Criminal Appeal Act, 1907, remedy this anomaly, as the benefits of that statute extend only to “a person convicted on indictment.”

Appeal to quarter sessions.

General right of appeal when imprisonment is imposed without option of fine.

P. 1034.

In Inland Revenue cases, and in some few other instances (*c.g.*, under the Diseases of Animals Act, 1894), an appeal will lie against the *dismissal* of a charge; but, unless it is clearly provided for by statute, no appeal will lie against an acquittal. Thus, where an information charged the offence of obstruction under s. 72 of the General Highway Act, 1835, it was held that the

Whether appeal lies against the dismissal of a charge.

(*m*₄) (1909) 25 T. L. R. 656.

(*n*) (1821) 4 B. & Ald. 519.

(*o*) [1892] 1 Q. B. 664; 61 L. J. M. C. 104; 66 L. T. 678; 40 W. R. 575; 56 J. P. 421.

informant could not (under s. 105 of the Act) appeal against a dismissal of the charge, although s. 105 confers a right of appeal on anyone who thinks himself aggrieved "by any order, conviction, judgment, or determination" (*R. v. JJ. of London*) (*p*). The general rule of law is that there is no appeal from an *acquittal*, and it requires very clear and specific words to give so unusual a right. This is strikingly exemplified by a recent decision on words apparently introduced by a corporation into a local Act for the very purpose of securing such an appeal. S. 66 of the Bradford Tramways and Improvement Act, 1897, is as follows: "Any person deeming himself aggrieved by any order, judgment, determination or requirement or the withholding or revocation of any certificate, licence, consent or approval of or by the corporation, or by any conviction or order made by the court of summary jurisdiction under any provisions of this Act may appeal to the next practicable court of quarter sessions under and according to the provisions of the Summary Jurisdiction Acts, and in regard to any such order the corporation may in like manner appeal." The corporation having appealed against the *dismissal* of an information seeking penalties under the Act, it was held that no such appeal lay. "It requires very distinct words," said Channell, J., "to give so unusual an appeal as that; and it is not sufficiently clearly and distinctly expressed to justify us in holding that an appeal of so exceptional a character is given" (*R. v. Wright; Ex parte Bradford Corporation*) (*q*).

Appeals
where penalty
exceeds given
amount.

In the *metropolis* there is a further provision for appeal from any decision of a metropolitan police magistrate where a sum exceeding 3*l.* (exclusive of costs) is ordered to be paid or imprisonment for more than one month is ordered (2 & 3 Vict. c. 71, s. 50). But an order under the Poor Laws, adjudging payment of half-a-crown a week towards the maintenance of a pauper relative is *not* an order in which the sum adjudged to be paid exceeds 3*l.* (*R. v. London JJ.*) (*r*).

Where (as under the Motor Car Act, 1903, *post*, p. 737) the right of appeal is expressly confined to cases in which

(*p*) (1890) 25 Q. B. D. 357; 59 L. J. M. C. 146; 55 J. P. 56.

(*q*) (1907) 72 J. P. 23; 6 L. G. R. 89.

(*r*) [1900] 1 Q. B. 438; 69 L. J. Q. B. 364; 64 J. P. 357.

the penalty exceeds a given amount, this means the amount of fine *exclusive* of costs. Adverting to the definition of "fine" in s. 49 of the Summary Jurisdiction Act, 1879 (*post*, p. 1053), *Alverstone*, C.J., said: "'Fine' P. 1053. seems clearly to be confined to pecuniary penalties or forfeitures of which the public would get the benefit, and to pecuniary compensation to the party aggrieved, and not to include costs of which no mention is made; and this becomes the more clear when we see that 'the sum adjudged to be paid' expressly includes costs in those cases where the amount is ascertained by the conviction or order itself" (*R. v. Novis*) (s).

Unless it is otherwise provided in the Act which confers the right of appeal, the power of the court to give effect to the order or conviction is not suspended by an appeal to quarter sessions; but, in most cases, it would be exceedingly improper for justices to refuse to suspend execution if notice of appeal had been given and recognizances entered into for the prosecution of the appeal (*Kendall v. Wilkinson*) (t).

Under the Summary Jurisdiction Acts of 1879 and 1884, a person authorized to appeal to quarter sessions from the conviction or order of a court of summary jurisdiction, or from a refusal to make such conviction or order, must (unless special conditions are prescribed) appeal subject to the following conditions and regulations (42 & 43 Vict. c. 49, ss. 31, 32; 47 & 48 Vict. c. 43, s. 6):—

Whether
appeal
suspends
execution of
conviction or
order.

Conditions of
appeal.

P. 1042.

P. 1064.

(1) The appeal must be made to the *next practicable* court of quarter sessions holden not less than *fifteen days* after the day on which the decision was given upon which the conviction or order was founded. As to what is the "next practicable" sessions, reference may be made to *R. v. Surrey JJ.* (u).

(2) The appellant must, within *seven days* after such decision, serve on the *other party*, and on the *clerk of the court* of summary jurisdiction, *notice in writing*, signed by himself, or by his agent on his behalf, of

(s) [1905] 2 K. B. 456; 74 L. J. K. B. 633; 69 J. P. 288.

(t) (1855) 4 E. & B. 680; 24 L. J. M. C. 89, 92.

(u) (1880) 6 Q. B. D. 100; 50 L. J. M. C. 10; 43 L. T. 500; 45 J. P. 93.

P. 1043.

his intention to appeal, and of the general grounds thereof. The notice may be served by transmitting it as a registered letter by post, 42 & 43 Vict. c. 49, s. 31 (vii.): but, if such service only is to be relied on, the notice must be sent to the correct address; and it is not necessarily sufficient to take the address given on the summons (*R. v. Essex*) (x).

Personal service is not necessary (*R. v. Somersetshire JJ.*) (y), though it has been held that service of the notice of appeal upon a solicitor, who acted at the hearing as advocate for the appellant, but thereafter ceased to represent her, is not sufficient service on the "other party" (*R. v. Oxfordshire JJ.*) (z). The notice is not invalid because it is addressed simply to the clerk of the court of summary jurisdiction, and not to the justices themselves, or to the court (*R. v. Essex JJ.*) (a).

Licensing
appeals.

It has been decided by the House of Lords that these provisions do *not* apply to appeals against refusals to *renew or transfer* licences, and it is, therefore, still necessary in such cases to serve each adjudicating justice with notice of appeal *within five days*. The *justices* are the *only proper respondents*, and it is not sufficient to serve the objector and their clerk (*Boulter v. Kent JJ.* (b); overruling *R. v. Glamorganshire JJ.* (c)). The Licensing Act of 1902 (s. 20) provides for the licensing justices being indemnified against their costs on the appeal; but if a borough chief constable appears as a respondent on such an appeal, the costs incurred by him cannot be charged on the borough fund (*Tynemouth Corporation v. Att.-Gen.*) (d).

Recognizance.
P. 1042.

(3) The appellant must, within three days *after* giving notice, enter into such recognizance as a court of summary jurisdiction (*i.e.*, any court of summary

(x) (1895) 11 T. L. R. 187; 43 W. R. 378.

(y) (1900) 64 J. P. 341; 16 T. L. R. 166.

(z) [1893] 2 Q. B. 149; 62 L. J. M. C. 157; 57 J. P. 409.

(a) [1892] 1 Q. B. 490; 66 L. T. 676; 61 L. J. M. C. 120; 40 W. R. 446; 56 J. P. 375.

(b) [1897] A. C. 556; 66 L. J. Q. B. 787; 77 L. T. 288; 61 J. P. 532.

(c) [1892] 1 Q. B. 621; 61 L. J. M. C. 169; 66 L. T. 444; 56 J. P. 437; 40 W. R. 436.

(d) [1899] A. C. 293; 68 L. J. Q. B. 752; 80 L. T. 633; 63 J. P. 404.

jurisdiction which has the notice and grounds of appeal before it: *R. v. Durham* (e)) may direct, conditioned to appear and try the appeal, abide the result, and pay such costs as may be awarded; or he may, by permission, give security by deposit of money. As to the mode of giving security, see 42 & 43 Vict. c. 49, s. 23 (*post*, p. 1037; and Rule 14, p. 1087).

It will be noted that the appellant must give the notice of appeal *before* he enters into the recognizance (cf. *R. v. Cheshire JJ.*) (f). In reckoning the three days, the first day will be taken exclusively and the last inclusively, Sunday being reckoned as a day. The court *must* take the recognizance, and it will be for the quarter sessions to decide whether or no the conditions of appeal have been properly complied with (*R. v. Wiltshire JJ.*) (g).

(4) When the appellant is in custody, the court of summary jurisdiction before whom he appears to enter into recognizance may, if it is thought fit, release him from custody on his entering into such recognizance, or giving security. Discharge
from custody.
P. 1043.

(5) The court of appeal may confirm, reverse, or modify the decision appealed from, or may remit the matter with its opinion thereon to a court of summary jurisdiction, or make such other order as may seem right. The order made on appeal will have the same effect, and be enforced in the same manner, as if it had been made by the court of summary jurisdiction. Such order may also be made as to costs as the court may think just; but costs cannot be given against the convicting justices if they are joined as respondents in an appeal:—at any rate, if they do not appear (*R. v. Goodall*) (h). Generally, as to the appearance by justices in support of their decision, see 70 J. P. 63. The recovery of costs ordered by the *quarter sessions* to be paid by either of the parties is provided for by s. 27 of the Summary Decision on
appeal.
P. 1043.

(e) [1895] 1 Q. B. 801; 72 L. T. 465; 59 J. P. 264.

(f) (1896) 60 J. P. 585.

(g) (1880) 24 Sol. J. 914.

(h) (1874) L. R. 9 Q. B. 557; 43 L. J. M. C. 119; 38 J. P. 616.

Jurisdiction Act, 1848 (*post*, p. 1013 ; see FORM 49, p. 1115). The costs will be recoverable as a civil debt.

P. 1013.

After an appeal against any conviction or order has been decided adversely to the appellant, the justices who made the same may proceed to issue their warrant of commitment or distress precisely as if no appeal had been made (11 & 12 Vict. c. 43, s. 27). If the appellant has been committed to prison and then released on bail, the original commitment is exhausted and a fresh one must issue (*R. v. Governor of Pentonville*) (*hh*).

Settlement
appeals.

These regulations as to appeal apply to excise and bastardy appeals, but do not affect appeals against orders for the removal of the poor (*R. v. Somersetshire JJ.* (*i*)). The judgments of the Court of Appeal in *R. v. Glamorganshire JJ.* (*k*) would seem to cover orders of removal, although that decision was overruled ; but see the special exception in 11 & 12 Vict. c. 43, s. 35 (*post*, p. 1016). See also LUNATICS (*post*, pp. 685, 688).

Special Case.

Appeal by
special case.

“ Any person aggrieved who desires to question a conviction, order, determination, or other proceeding of a court of summary jurisdiction, on the ground that it is erroneous in point of law, or is in excess of jurisdiction, may apply to such court to state a SPECIAL CASE, setting forth the facts of the case and the grounds upon which the proceeding is questioned ; and, if the court decline to state the case, may apply to the High Court of Justice for an order requiring the case to be stated ” (42 & 43 Vict. c. 49, s. 33). This section is to be construed and read with 20 & 21 Vict. c. 43 (*post*, p. 1018) ; but where there is any inconsistency, the later Act will, of course, prevail (*Stokes v. Mitcheson*) (*l*).

P. 1044.

Either party, then, if dissatisfied with the decision in point of law, may apply to the court to state and sign a

(*hh*) (1902) 67 J. P. 206.

(*i*) (1889) 22 Q. B. D. 625 ; 58 L. J. M. C. 155 ; 60 L. T. 834 ; 53 J. P. 470.

(*k*) *Ante*, p. 156.

(*l*) [1902] 1 K. B. 857 ; 71 L. J. K. B. 677 ; 86 L. T. 767 ; 66 J. P. 615 ; 50 W. R. 553.

case, setting forth the facts and grounds of their determination for the opinion of the High Court. "It is, however, extremely doubtful," said *Channell, J.*, "whether in a case of a *purely criminal* character, *e.g.*, where an indictable offence is dealt with summarily—as distinguished from one of a *quasi-criminal* character, *e.g.*, a prosecution for breach of a bye-law—the *prosecutor* would be a person aggrieved and as such entitled to apply for a case to be stated" (*Foss v. Best*) (*m*).

The application must be made in writing within SEVEN CLEAR DAYS from the date of the proceeding to be questioned, and the case must be stated within THREE CALENDAR MONTHS after the date of the application, and after the recognizance (hereinafter mentioned) has been entered into. This written application must be left with the clerk of the court within the seven days, and there must also be left with him a copy of such application for *each* of the justices constituting the court to be forwarded by him to them (Rule 18, *post*, p. 1088). Where, however, the appellant, who had been convicted by two justices, personally served each of the justices with a copy of the application and left with the assistant clerk to the justices another copy of the application addressed to the clerk to the justices, it was held that there had been a sufficient compliance with the rule (*R. v. Woodcock*) (*n*). If without any default on the part of the appellant, the statement of the case is *delayed by the justices* beyond the three months' limit, the court may nevertheless entertain the appeal (*Hughes v. Wavertree*) (*o*).

Application
for case.

The appellant must within THREE DAYS after receiving the case (Sunday being counted as one of the days), transmit the same to the Crown Office, first giving notice in writing of the appeal, with a copy of the case, to the other party to the proceeding in which the determination was given (20 & 21 Vict. c. 43, s. 2). If the respondent can be found, notice must be given to him and not to his solicitor (*Hill v. Wright*) (*p*). These conditions must be

Transmission
to Crown
Office.

P. 1018.

(*m*) See (*r*), *post*, p. 160.

(*n*) [1907] 2 K. B. 104; 76 L. J. K. B. 683; 96 L. T. 672; 71 J. P. 241.

(*o*) (1894) 58 J. P. 654.

(*p*) (1896) 60 J. P. 312.

Transmission
to Crown
Office—*contd.*

strictly complied with, and they cannot be waived, although, if strict compliance is absolutely impossible, the case may yet be entertained (cf. *Mayer v. Harding*) (*q*). In *Mayer v. Harding*, the case could not be duly transmitted because the offices of the court were closed: it was received on Good Friday and transmitted to the court on the Wednesday following. But the mere circumstance that the appellant has made every effort to serve the respondent will not avail him (*Foss v. Best*) (*r*). The case of *Syred v. Carruthers* (*s*) has been cited to the contrary; but in that case the court found facts upon which they were able to hold that there *had been a sufficient compliance* with the conditions of service; the appellant did what he could to find the respondent; gave notice to the solicitor who had appeared at the hearing, and, after the three days had expired, gave notice to the respondent, who made no objection.

Recognizance
to prosecute
appeal.

Cf. *post*,
p. 191.

P. 1018.

The case must be actually lodged in the Crown Office within the three days (*Banks v. Goodwin* (*t*); *Aspinall v. Sutton* (*u*)). But, if it reached the office, in due course of post, on the third day, it is presumed that it would be immaterial that it reached its destination after office hours. The appellant, on or after applying for a case, must also, at some time before the case is actually stated and given out by the justices, enter into a *recognizance* to prosecute his appeal, to submit to the judgment of the High Court, and to pay any costs awarded: he may then, if in custody, be at once liberated (20 & 21 Vict. c. 43, s. 3; *Stanhope v. Thoresby* (*x*); *Walker v. Delacombe* (*y*)). If the appeal is brought by an incorporated company, the recognizance must be entered into by a director properly authorized by the company in that behalf (*Southern Counties Deposit Bank, Limited v. Boaler* (*z*)). As to the enforcement of the recognizance, see *post*, p. 1020.

(*q*) (1866) L. R. 2 Q. B. 410; 16 L. T. 429; 31 J. P. 376.

(*r*) [1906] 2 K. B. 105; 75 L. J. K. B. 575; 95 L. T. 127; 21 Cox, 226; 70 J. P. 383; 22 T. L. R. 542.

(*s*) (1858) E. B. & E. 469; 27 L. J. M. C. 273; 23 J. P. 37.

(*t*) (1863) 32 L. J. M. C. 87.

(*u*) [1894] 2 Q. B. 349; 63 L. J. M. C. 205; 58 J. P. 622.

(*x*) (1865) L. R. 1 C. P. 423; 35 L. J. M. C. 182; 14 W. R. 651.

(*y*) (1894) 63 L. J. M. C. 77; 58 J. P. 88.

(*z*) (1896) 59 J. P. 536.

This procedure applies to *all proceedings* before justices sitting as a *court* and exercising *summary jurisdiction*, *e.g.*, an adjudication on an application for the issue of a distress warrant for the non-payment of poor-rates (*Fourth City Mutual Building Society v. West Ham*) (a); or on an application for an order for the restitution of stolen property under 24 & 25 Vict. c. 96, s. 100 (*Moss v. Hancock*) (b). It was held to apply even when justices sat under a local Act which provided that their decision should be final (*Leicester v. Hewitt*) (c); but *cf.* *Westminster City Council v. Gordon Hotels* (d), decided under s. 33 (ii.) of the Public Health (London) Act, which makes a magistrate's determination as to what is "trade refuse" final. The procedure is wholly irrespective of any right of appeal under the statute giving the court cognizance of the matter. Either party, however, by adopting this procedure, abandons any privilege of appeal to quarter sessions, which he might otherwise have enjoyed (20 & 21 Vict. c. 43, s. 14).

When a case may be stated.

P. 1021.

In *R. v. Pontypool JJ.* (e), it was held that a case might be stated by *licensing justices*; but the decision in *Boulter v. Kent JJ.* (f) throws the gravest doubt on the earlier case, if, indeed, it does not actually overrule it. It appears, too, that the *power to state a case* upon a point of law arising on an application for an order under the Summary Jurisdiction (Married Women) Act, 1895, is excluded by the terms of that statute (*Manders v. Manders*) (g); though it is otherwise where a point of law arises on an application for the payment of arrears due under such an order (*Ruther v. Ruther*) (h). Nor can a case be stated by a justice acting under s. 299 of the Lunacy Act, 1890, because in making an order thereunder he does not act as a court of summary jurisdiction (*post*, p. 683; see 11 & 12 Vict. c. 43, s. 35, *post*, p. 1016,

(a) [1892] 1 Q. B. 661; 61 L. J. M. C. 178; 56 J. P. 440.

(b) *Post*, p. 195.

(c) (1893) 62 L. J. M. C. 51; 68 L. T. 201; 57 J. P. 344.

(d) [1908] A. C. 142.

(e) (1892) 56 J. P. 301; 40 W. R. 426.

(f) *Ante*, p. 156.

(g) [1897] 1 Q. B. 474; 66 L. J. Q. B. 296; 45 W. R. 287; 61 J. P. 105.

(h) [1903] 2 K. B. 270; 72 L. J. K. B. 826; 67 J. P. 359; 52 W. R. 154.

When case
may be stated
—*contd.*

and *In re Bethel* (i)); nor do justices sitting to revise the jury lists under s. 10 of the County Juries Act, 1825 (6 Geo. 4, c. 50) form a court having power to state a case (*Hagmaier v. Willesden Overseers*) (k). It would, too, seem clear that justices, who are taking depositions for the purpose of committing a prisoner for trial, cannot state a case, as they are not exercising summary jurisdiction (cf. *Foss v. Best*) (l).

It is for the justices to state the case, but it is in practice often drawn by the clerk of the court and settled by the counsel or solicitors of the respective parties.

Refusal to
state case.
P. 1019.

Should the justices be of opinion that there is no doubtful point of law involved, and that the application is "frivolous," they may refuse to state a case unless the application is made by or under the direction of the Attorney-General (20 & 21 Vict. c. 43, ss. 4, 5). The intending appellant may, however, apply to the High Court for an order in the nature of a *mandamus*, calling upon the justices to state and sign a case (Crown Office Rules, 1906, r. 49). An order will not be made if the issue could have been more conveniently raised by *certiorari* (*R. v. Owen*; *Scovell, Ex parte* (1907) 72 J. P. 60). In a recent case, the applicant had entered into a recognizance with a surety under s. 3 (*ante*, p. 160) and applied for a rule calling upon the magistrate to state a case. Between the date of the rule *nisi* and the date when it was made absolute, the applicant became bankrupt and his surety died. It was, nevertheless, held that a fresh recognizance could not be required (*R. v. Kettle and London C. C.*) (m).

Argument of
case.

The magistrates have no right to be heard when the case comes on for argument in the King's Bench Division (*Smith v. Butler*) (n). But it seems from the report of a case heard in 1897 (*Heywood v. Whitehead*) (o), that the justices appeared by counsel on the argument, and were, indeed, ordered to pay the costs.

(i) (1899) 80 L. T. 492; 63 J. P. 453.

(k) [1904] 2 K. B. 316; 73 L. J. K. B. 638; 90 L. T. 683; 52 W. R. 654; 20 T. L. R. 494; 68 J. P. 343.

(l) *Ante*, p. 160.

(m) [1905] 1 K. B. 212; 74 L. J. K. B. 254; 69 J. P. 55.

(n) (1886) 16 Q. B. D. 349; 34 W. R. 416; 50 J. P. 260.

(o) (1897) 76 L. T. 781.

After the decision of the High Court, justices may issue process to enforce it; see *post*, p. 1020.

There are also modes of appeal by *certiorari* and *mandamus* (see Paley on "Summary Convictions," 8th edit., pp. 444—479, &c.). It will be sufficient here to state that the object of applying for a writ of *certiorari*, so far as relates to matters with which we are now concerned, is to cause a conviction or order of justices to be removed into the King's Bench Division for the purpose of showing that the case was not one in which the justices had jurisdiction to do the act complained of. If it appear that the justices had in fact jurisdiction, the court will not inquire further into the case; but the court will inquire into the circumstances for the purpose of ascertaining whether the justices had in fact jurisdiction to make the conviction or order (cf., *e.g.*, *ante*, p. 26). The function of the court is not to review the decision which has been come to, but to pronounce whether or no the justices were warranted in entering upon the matter at all (cf. *R. v. Bradley*) (*p*). A *certiorari* must be moved for within six months after the date on which the conviction or order was made, and six days' previous notice of the application must be given to the justices (see Crown Office Rules, 1906, rr. 20, 21, and *Ex parte Roberts*) (*q*). As to the object of a writ of MANDAMUS, see *ante*, pp. 22 *et seq.*

Certiorari and mandamus.

If it is desired to stay justices from proceeding further with a particular matter on the ground that they have no jurisdiction to entertain it, application must be made for a writ of prohibition (Crown Office Rules, 1906, rr. 70, 71). But, if justices have jurisdiction over the subject-matter of the proceedings before them, a prohibition will not issue upon the ground that they may make a mistake in law in exercising their jurisdiction, *i.e.*, merely on the supposition that they may *exceed* their jurisdiction (*R. v. JJ. of Kent*) (*r*). Prohibition.

Where the question of jurisdiction turns on the interpretation of particular statutes, and the hearing of a summons is adjourned to enable the question to be raised,

(*p*) (1894) 63 L. J. M. C. 183; 70 L. T. 379; 58 J. P. 199.

(*q*) (1886) 50 J. P. 567.

(*r*) (1889) 24 Q. B. D. at p. 183.

application for prohibition is a convenient mode of procedure (*R. v. Longe*) (s).

Attempts.

Attempts to
commit crime.

“So long as an act rests in mere intention, it is not punishable by our laws; but immediately when an act is done the law judges, not only of the act done, but of the intent with which it is done” (Per *Lord Mansfield* in *R. v. Scofield*) (t). It is, therefore, important to distinguish between a mere *intention* and an *attempt*. It was formerly held, and, it is submitted, correctly held, that where the acts done could not possibly have culminated in the full offence in the manner intended, there could be no conviction for an attempt, as, *e.g.*, where the hand was put into the empty pocket of another with intent to steal whatever might happen to be therein. This, although clearly an assault with intent to steal, was held not to be an *attempt* to steal from the person (*R. v. Collins*) (u). But the gravest doubt has now been thrown on the authority of the case last cited—indeed, it is generally regarded as being overruled—and it is not easy to define an “attempt” in view of recent decisions (*cf. R. v. Brown* (x); *R. v. Ring* (y); *R. v. Brown* (z)). It should be remembered that there may be a conviction for an attempt, although the accused *voluntarily* desisted from the performance of the acts which would have resulted in the completed offence. Any attempt to commit a felony or misdemeanour is in itself a misdemeanour, unless it is made a felony by the express provisions of some statute; but *where an offence is not punishable except in a court of summary jurisdiction, no penalty can be imposed for a mere attempt to commit such an offence.*

Bail.

Admitting
to bail.

There is no statutory prohibition against taking bail in any case except treason, and we have seen that, where

(s) (1897) 66 L. J. Q. B. 278.

(t) (1784) Cald. 397, 403.

(u) (1864) L. & C. 471.

(x) (1890) 24 Q. B. D. 357; 61 L. T. 594; 38 W. R. 95; 54 J. P. 408.

(y) (1892) 61 L. J. M. C. 116.

(z) Cited *post*, p. 208; and see *R. v. Linneker*, *post*, p. 288.

a person is taken into custody *without a warrant* and cannot be brought before a court of summary jurisdiction within twenty-four hours, he may be discharged by the police on his own recognizance, with or without sureties, to appear at such court (*ante*, p. 51); while we have further seen that, in any case, the accused may be brought before a justice or a court of summary jurisdiction, who may adjourn the hearing of the charge, remanding the accused in custody, or releasing him on his own recognizance, with or without sureties, for his re-appearance (pp. 79, 124). Should a subsequent remand become necessary, the sureties, if any, must attend the court and renew their obligations, as bail cannot be taken, once for all, for the appearance of a prisoner from time to time. Upon *committal for trial* it was not, formerly, competent for a magistrate to accept bail *without sureties*; but he may, now, dispense with sureties altogether, if, in his opinion, the adoption of such a course will not tend to defeat the ends of justice (Bail Act, 1898, 61 Vict. c. 7, s. 1). It should also be mentioned that, upon committal the magistrate might, as regards certain specified offences, admit or decline bail in accordance with his own judgment; but, as regards others, if adequate bail were tendered he was, until January 1st, 1909, bound to accept it. In the one case bail was said to be "discretionary," in the other "compulsory." Discretion as to the granting of bail might be exercised in all cases of felony (except treason), and in all cases of misdemeanour where the costs of the prosecution could be allowed out of the county rate (11 & 12 Vict. c. 42, s. 23). Admitting to bail.

When bail was discretionary.

The committing magistrate might, then, *in his discretion* admit the accused to bail, without sureties, or upon his procuring such surety or sureties (in addition to his own recognizance) as, in the opinion of the magistrate, would be sufficient to ensure the appearance of the accused at the trial, where the committal was in respect of any felony, except treason, or in respect of any one of a large class of misdemeanours specially provided for by numerous statutes (see the sixth edition of this work at pp. 152, 153).

But the Costs in Criminal Cases Act, 1908 (8 Edw. 7, c. 15), which came into operation on *January 1st, 1909*,

P. 977.

now provides that the court may, in the case of ANY INDICTABLE OFFENCE (other than offences in relation to the non-repair or obstruction of a highway, public bridge, or navigable river) direct payment of the costs of the prosecution or defence or both out of the funds of the county or county borough (APPENDIX, p. 1078). Bail is, therefore, DISCRETIONARY in all such cases.

When bail should be allowed.

In cases where the admission to bail is discretionary, the court should consider the gravity of the charge, the weight of the evidence adduced in support of that charge, and the severity of the punishment. But these circumstances should be considered only in connection with the probability of the accused appearing to take his trial, inasmuch as the sole ground for the committal to prison is to ensure such appearance. And except in this connection, it is not competent for the court to have regard to the character, behaviour, or opinions of the accused or his bail (*Re Robinson (a)*; *R. v. Barronet (b)*). "It cannot be too strongly impressed upon magistrates that bail is not intended to be punitive" (per *Russell, C. J.*, in *R. v. Rose* (1898), 67 L. J. Q. B. 292). And see Home Office Circular, August 6th, 1906.

Bail may be accepted at any time before sessions.

Form, p. 994.

Pp. 977, 978.

Pp. 1048. 1068.

The committing magistrate may admit the accused to bail at any time after his commitment and before the commencement of the session at which he is to be tried; while, if the magistrate thinks fit, he may certify on the back of the warrant of commitment his consent to the accused being admitted to bail, stating the amount which he considers ought to be accepted. Should this be done, any justice attending at the prison where the accused is in custody may admit him to bail accordingly (11 & 12 Vict. c. 42, ss. 23, 24). And the provisions of the Summary Jurisdiction Act, 1879, as to the taking of recognizances out of court by the clerk of the court or before the governor or keeper of the prison, &c., will apply (42 & 43 Vict. c. 49, s. 42; 52 & 53 Vict. c. 63, s. 13 (xi); and Summary Jurisdiction Rules, 1886, rr. 13, 13a, *post*, p. 1087).

When bail is compulsory.

In case of committal in respect of a misdemeanour as to which bail is still compulsory, it is very usual to

(a) (1854) 23 L. J. K. B. 286.

(b) (1853) 22 L. J. M. C. 25.

accept the defendant's own recognizance. If this course be not adopted, the court must fix the amount of bail required, and should the accused be committed to prison in default of procuring immediate bail, any member of the visiting committee or any other magistrate having jurisdiction is bound, upon application, to admit him to bail (11 & 12 Vict. c. 42, s. 23).

P. 977.

Moreover, the committing justice *must* in all cases where bail is "compulsory" certify upon the commitment warrant the amount which he considers sufficient: and, if the amount fixed were so excessive as to amount virtually to a refusal of bail altogether, such conduct on the part of the justice would in itself be a punishable misdemeanour (see 49 J. P. 489; 50 J. P. 313).

In cases where the accused is in prison, the magistrate admitting him to bail should lodge with the keeper of the prison a writ of deliverance, as an authority to such keeper to discharge the prisoner out of his custody (11 & 12 Vict. c. 42, s. 24).

Where accused is admitted to bail *after* commitment
P. 979.

In suspicious cases the names of persons tendered as sureties may be required to be furnished in advance, in order that the prosecutor or the police may make inquiry as to their character and means. 'Twenty-four hours', and even forty-eight hours', notice of bail is frequently required. The sureties are bound to answer on oath as to their position and liabilities, and as to the sufficiency of their property to meet their recognizances. It is not usual to accept as bail persons who are not householders; and the practice of accepting the defendant's own solicitor as a surety has been condemned as highly inexpedient if not improper (*R. v. Scott Jervis*) (c).

Form, p. 995.
Notice of bail.

Who should be accepted as bail.

Proposed sureties should not be rejected if the money qualification is satisfactorily established (*R. v. Badger*) (d); and it was formerly held that they should not be rejected on the ground that they have been *indemnified*, if otherwise of adequate means (*R. v. Broome*) (e). But a contract to indemnify bail is clearly illegal and unenforceable, and it is submitted that a magistrate would be amply justified in refusing to accept a surety who admittedly

(c) *Times News.*, November 20th, 1876.

(d) (1843) 12 L. J. M. C. 66; 7 Jur. 216.

(e) (1868) 18 L. T. N. S. 19, per *Martin*, B.

had been indemnified (cf. *Hermann v. Jeuchner* (f); *Consolidated Exploration, &c., Co. Ltd. v. Musgrave*) (g). Indeed, it seems to be a criminal offence for an accused person to indemnify bail, as being a proceeding tending to public mischief (*R. v. Porter*, C. C. A., 18 Dec. 1909).

Bail may deliver up the defendant.

Should the bail have reason to fear that the accused will abscond, they may, during the continuance of their liability, apprehend him themselves and take him before a magistrate, who will require him to find other bail, or commit him in default of his so doing; or the better course, if circumstances will allow, will be for the bail to apply to a magistrate, who will grant a warrant for the defendant's apprehension. As soon as the accused has been surrendered by his bail or apprehended upon the warrant, his sureties will be discharged from their liability.

Criminal Appeal Act, 1907.

As to the procedure to be adopted in regard to the taking of bail, the rights of the sureties and the estreating of recognizances under the CRIMINAL APPEAL ACT, 1907, see the Rules and Forms in the APPENDIX at pp. 1208—1214; and cf. *R. v. Ridley* (h).

As to applications for bail to judges of the High Court, by summons in chambers issuing from the Crown Office, see the Crown Office Rules and Forms, 1906, rr. 111, 266 (Form 70).

Compounding Offences.

Compromise of felony.

It is illegal to countenance any compromise of a *felony*, and, indeed, the mere concealment of a felony which comes to one's knowledge is said to amount to the somewhat vague and indefinite offence known as "misprision" of felony. At all events, a man is guilty of a punishable offence who takes his own stolen goods back again under an agreement not to prosecute the thief; so, too, if he receives any compensation for the loss of stolen goods or for any other *felonious* injury upon condition of not prosecuting the felon. But, it must be understood that it is the *agreement not to prosecute* (whether such agreement be carried out or not) which introduces the ele-

(f) (1885) 15 Q. B. D. 561; 54 L. J. Q. B. 340; 53 L. T. 94; 49 J. P. 502.

(g) [1900] 1 Ch. 37; 69 L. J. Ch. 11; 81 L. T. 747; 48 W. R. 298.

(h) (1909) 25 T. L. R. 508.

ment of illegality; and a man is perfectly justified in accepting the return of goods or money of which he has been feloniously deprived, provided that he neither expressly nor by implication makes terms as to the commencement or the abandonment of criminal proceedings (*R. v. Burgess*) (i).

It is, by statute, a felony corruptly to take any money or reward, directly or indirectly, in consideration of helping any person to recover stolen, embezzled or extorted property, unless all diligence has been used to bring the offender to justice (24 & 25 Vict. c. 96, s. 101). And advertisements offering rewards for the restoration of any stolen "property whatsoever," undertaking that no questions shall be asked if the property be returned, are forbidden under heavy penalties recoverable by action (24 & 25 Vict. c. 96, s. 102; 33 & 34 Vict. c. 65, s. 3). The word "property" here includes a dog, although the Larceny Act of 1861 (24 & 25 Vict. c. 96) contains a special fasciculus of sections relating to the stealing of dogs as distinguished from property generally (*Miramis v. Our Dogs Publishing Co.*) (k).

Corruptly taking money for return of stolen goods.

Offering rewards by advertisement.

It may, however, be noticed that where the defendant has been convicted for a first offence under the Larceny Act, 1861, or under the Malicious Injuries to Property Act, 1861, the court may effect a compromise by discharging the offender from his conviction on his making such amends to the prosecutor for damages and costs, or either of them, as the court may approve (24 & 25 Vict. c. 96, s. 108; 24 & 25 Vict. c. 97, s. 66; see now the Probation of Offenders Act, ante, p. 101).

So far as *misdemeanours* are concerned, it is undoubtedly illegal, though probably not a punishable offence, to enter into any arrangement to stifle the prosecution if the misdemeanour is one of a *public* nature; as, e.g., where the charge is in respect of a common nuisance, or is one of assault coupled with riot and the obstruction of a constable. Whether this would be so if the crime were rather in the nature of a private wrong,

Compromise of misdemeanour.

(i) (1886) 16 Q. B. D. 141; 55 L. J. M. C. 97; 53 L. T. 918; 34 W. R. 307; 50 J. P. 520.

(k) [1901] 2 K. B. 564; 70 L. J. K. B. 879; 85 L. T. 6; 49 W. R. 626; 17 T. L. R. 649.

as, *e.g.*, a simple charge of assault, there may be some doubt (*Keir v. Leeman* (l); *Windhill Local Board v. Vint* (n)).

Compromise
of offences
punishable on
summary
jurisdiction.

It is a misdemeanour to compound a penal action without the consent of the court (18 Eliz. c. 5, ss. 3—5); though, as to offences which are cognizable only by courts of summary jurisdiction, this Act, which prohibits the compounding of informations under penal statutes, does not seem to apply (*R. v. Crisp*) (n). But, where the proceedings are in respect of offences of a public nature, they cannot, when once commenced, be *stayed* by arrangement between the parties; and, even in the case of a common assault, where the complaint with a view to *summary* trial can only be made at the instance of the injured party, yet, if the charge be once formally preferred, it is very doubtful whether any compromise can lawfully be effected (see *post*, p. 279). The injured party may compromise or settle his private damage; but he cannot compel the withdrawal of the proceedings already commenced by him, and the magistrates may convict notwithstanding any such compromise.

In the metropolitan police district it is forbidden, under a penalty of 10*l.*, for an informant to compound an information without the permission of the magistrate, unless the offence were one by which the informant was himself “personally aggrieved” (2 & 3 Vict. c. 71, s. 33).

Evidence of Parties—their Husbands and Wives.

When defen-
dant is a
competent
and com-
pellable
witness.

In proceedings commenced by *complaint*, as distinguished from those commenced by *information*, where the object of the complainant is merely to obtain an order for the payment of money or for the doing of some act which the defendant may be required to perform, the right and liability to give evidence has long been extended to all parties and their husbands and wives. This was (and, of course, still is) the case, *e.g.*, in proceedings in bastardy, applications for summary ejection, the recovery by a local authority of expenses incurred in

(l) (1846) 9 Q. B. 371; 15 L. J. Q. B. 360; 10 Jur. 742.

(m) (1890) L. R. 45 Ch. D. 351; 59 L. J. Ch. 608; 38 W. R. 738.

(n) (1818) 1 B. & Ald. 282.

the repair of streets, applications for sureties of the peace, or for the recovery of a fare wrongfully withheld by the hirer of a hackney carriage, even though such fare was expressly stated to be recoverable "as a penalty" (see *R. v. Kerswill*) (o). So, again, the application for an order was always regarded as a civil proceeding where no question of penalty could arise until the order had been made and disobeyed (cf. *post*, p. 412).

In all proceedings, however, of a *criminal* nature, though the prosecutor might appear as a witness, the accused (unless expressly empowered by statute) was formerly neither competent nor compellable to give evidence for or against himself; and no husband was competent or compellable to give evidence for or against his wife or *vice versa*. But, observe that there was no rule which precluded the husband or wife of the informant from giving evidence either in support of the information or on behalf of the defendant, as the prosecution is supposed to be really undertaken on behalf of the Crown, and the informant is regarded merely as a "nominal" prosecutor.

When defendant was formerly neither a competent nor a compellable witness.

Moreover, there was a well-established exception to the rule in proceedings against a husband or wife for bodily injury or violence inflicted upon or displayed towards his or her wife or husband. In such proceedings the wife or husband of the accused, as the case might be, was competent and compellable to give evidence (Stephen's "Digest of Evidence," 7th edit., p. 126). But the exception was confined to cases of personal injury, and did not extend, *e.g.*, to a charge against a husband under the Vagrant Act for neglecting to maintain his wife (*Reeve v. Wood*) (p).

Common law exception to rule.

The distinction between civil and criminal summary proceedings has been thus expressed by Lord Campbell: "The test is whether it is sought to recover a sum of money in the nature of a debt, or to inflict punishment of an exemplary or public nature" (*Cattell v. Iveson*) (q). And the mere statement in an Act of Parliament that a sum is recoverable as a penalty does not turn the non-

Distinction between civil and criminal proceedings.

(o) [1895] 1 Q. B. 1; 71 L. T. 574; 43 W. R. 59; 59 J. P. 342.

(p) (1865) 34 L. J. M. C. 15; 11 L. T. N. S. 449.

(q) (1858) 27 L. J. M. C. 167; 4 Jur. 560; 22 J. P. 672.

payment of what is merely a debt into an offence (per *Charles, J.*, in *R. v. Kerswill* (*r*)).

Case of
defendants
charged
jointly.

When defendants were charged separately, although for offences committed at the same time and place, they were, of course, treated as independent parties, so far as their testimony was concerned. But where the information was against several defendants jointly, no one of them could be called at the hearing to give evidence against or in favour of any of the others jointly charged with him, unless he had been previously convicted, acquitted or discharged (*R. v. Payne*) (*s*); or unless the justices thought fit to allow the case against a joint defendant to be tried separately. As we shall see, a defendant may now give evidence whether charged solely or jointly with another person. Where a prisoner is charged jointly with another, he may give evidence *on behalf of his fellow-prisoner*, not merely on his own behalf (*R. v. McDonell*) (*ss*); but if one of two persons jointly charged gives evidence *tending to criminate the other*, the former may be cross-examined by or on behalf of the latter (*R. v. Hadwen*) (*t*).

Communica-
tions between
husband and
wife during
coverture are
privileged.

P. 1073.

It is especially to be observed, in connection with the evidence given by or against a husband or wife, that no husband is compellable to disclose any communication made to him by his wife during the marriage; and no wife is compellable to disclose any communication made to her by her husband during the marriage (16 & 17 Vict. c. 83, s. 3; 61 & 62 Vict. c. 36, s. 1 (*d*)).

Evidence in
quasi-
criminal
proceedings.

As to proceedings which are criminal *in form* only, it was provided so long ago as 1877, that on the trial of any indictment or other proceeding for the non-repair of a public highway or bridge, or for a nuisance to a public highway, river, or bridge, and of *any other indictment or other proceeding instituted for the purpose of trying or enforcing a civil right only*, every defendant to such indictment or proceeding, and the wife or husband of any such defendant, should be admissible witnesses and *compellable* to give evidence (40 & 41 Vict. c. 14).

(*r*) Cited *ante*, p. 171.

(*s*) (1872) L. R. 1 C. C. R. 349; 41 L. J. M. C. 65.

(*ss*) (1909) 53 S. J. 745; 25 T. L. R. 808.

(*t*) [1902] 1 K. B. 882; 71 L. J. K. B. 581; 86 L. T. 601; 66 J. P. 456.

There were, moreover, numerous *statutory* exceptions to the general rule excluding the defendant and the wife or husband of the defendant from the witness-box; and now, by a general Act, applicable to all criminal proceedings (except such as were already covered by the last cited statute), the state of the law is completely altered.

It is still impossible to compel the defendant to give evidence on behalf of the prosecution; and (save in cases specially provided for by the common law or the Act itself) it is still impossible to call the *wife or husband* of the defendant as a witness for the *prosecution*. But it is now enacted thus:—"Every person *charged with an offence* and the *wife or husband*, as the case may be, of the person so charged, shall be a *competent* witness for the *defence* at every stage of the proceedings, whether the person so charged is charged solely or jointly with any other person" (61 & 62 Vict. c. 36, s. 1).

It is, however, declared that the person charged is not to be called as a witness in pursuance of the Act *except upon his own application*; nor can the wife or husband be called (*u*), except upon the application of the person charged, save in the special cases provided for by s. 4 and hereinafter particularly set forth (*ib.* s. 1 (a) (c)).

We have already seen (*ante*, p. 171) that when the accused is charged with inflicting bodily injury upon his or her wife or husband, as the case may be, such wife or husband has long been competent and *compellable* to give evidence on behalf of the prosecution. It is now further provided by the Act (s. 4) that:—"The wife or husband of a person charged with an offence under any enactment mentioned in the schedule to this Act, may be called as a witness either for the *prosecution*, or defence and *without the consent of the person charged*."

The OFFENCES referred to in the enactments mentioned in the schedule are as follows:—

- (a) Neglecting to maintain or deserting wife or family (Vagrancy Act, 1824, *post*, pp. 922, 926).
- (β) Offences against the Prevention of Cruelty to Children Act, 1894, or offences relating to the *employment of children* (*post*, p. 372).

(*u*) *N.B.*—The section does not in terms render the wife or husband a *compellable* witness for the defence.

Effect of the Criminal Evidence Act, 1898.

APPENDIX,
post, p. 1073.

Competency of accused, and of wife or husband of accused, to give evidence for the *defence*.

P. 1073.

But not unless on the *application* of the accused.

P. 1073.

When wife or husband of accused may be called for the *prosecution*.

P. 1074.

When wife or husband of accused may be called for the *prosecution*—*could*.

The Acts now in force are those of 1904 and 1908 (4 Edw. 7, c. 15; 8 Edw. 7, c. 67); and, by s. 27 of the Children Act, 1908, a reference to offences under Part II. of the Act and under the statutes included in the 1st schedule thereto (see list, *post*, p. 372) is to be substituted for the above reference to the Act of 1894.

- (γ) Outrages on decency in violation of 48 & 49 Vict. c. 69, s. 11 (*post*, p. 565).
- (δ) Keeping a brothel, if proceedings are taken summarily under the Criminal Law Amendment Act, 1885 (*post*, p. 345).
- (ε) Offences against *women and girls* (x),
 - (i.) Rape (24 & 25 Vict. c. 100, s. 48, *post*, p. 869).
 - (ii.) Indecent assault (*ib.* s. 52, *post*, p. 287).
 - (iii.) Various forms of abduction (*ib.* ss. 53—55; 48 & 49 Vict. c. 69, s. 7, *post*, p. 205).
 - (iv.) Various forms of procuration (48 & 49 Vict. c. 69, ss. 2, 3, *post*, p. 802).
 - (v.) Defilement of girl under thirteen (48 & 49 Vict. c. 69, s. 4, *post*, p. 364); of girl between thirteen and sixteen (*ib.* s. 5, *post*, p. 365).
 - (vi.) Defilement of idiots and imbeciles (*ib.* s. 5, *post*, p. 365).
 - (vii.) Administering drug with a view to carnal connection (*ib.* s. 3, *post*, p. 426).
 - (viii.) Detention in a brothel or with a view to defilement (*ib.* s. 8, *post*, p. 347).
 - (ix.) Owners, &c., of premises permitting defilement of young girls thereon (*ib.* s. 6, *post*, p. 366).
- (ζ) Offences by husband against wife's property, or *vice versâ*, within Married Women's Property Act, 1882 (45 & 46 Vict. c. 75, ss. 12, 16, *post*, p. 563). And see PUNISHMENT OF INCEST ACT, 1908, *post*, p. 566.

Special provisions as to *procedure*.

The Act contains, too, the following special provisions as to *procedure* :—

- (a) “ Every person called as a witness in pursuance of this Act shall, unless otherwise ordered by the court, *give his evidence from the witness-box* or

(x) *N.B.*—It will be noted that bigamy is not included.

other place from which the other witnesses give their evidence" (61 & 62 Vict. c. 36, s. 1 (g)). P. 1074.

(β) "The *failure* of any person charged with an offence, or of the wife or husband, as the case may be, of the person so charged, to give evidence shall *not* be made the subject of any comment by the prosecution" (*ib.* s. 1 (b)). But this provision does not operate to deprive the judge of the right to comment on such failure.

(γ) "Where the *only witness* to the facts of the case (*i.e.*, the only witness other than any witness or witnesses who speak merely as to the character of the accused) called by the defence is *the person charged*, he shall be called as a witness *immediately after the close of the evidence* for the prosecution" (*ib.* s. 2). This will not affect proceedings on an examination with a view to committal for trial (*ante*, p. 143). P. 1074.

(δ) "In cases where the right of *reply* depends upon the question whether evidence has been called for the defence (*i.e.*, in cases in which a law officer of the Crown does not appear to prosecute), the fact that the person charged has been called as a witness shall not of itself confer on the prosecution the right of reply" (*ib.* s. 3). This provision has no application to proceedings in courts of summary jurisdiction (*cf. ante*, p. 87). P. 1074.

The following provisions relate to the cross-examination of the accused "as to credit." Cross-examination of accused *as to credit*.

"A person charged and being a witness in pursuance of this Act *may be asked* any question in cross-examination notwithstanding that it would tend to *criminate* him as to the offence charged" (*ib.* s. 1 (e)). P. 1073.

But the statute goes on to provide:—

"A person charged and called as a witness in pursuance of this Act shall *not be asked* (and if asked shall not be required to answer) any question tending to show that (α) he has committed or been convicted of or been charged with *any offence other than that wherewith he is then charged*; or (β) he is of *bad character*, unless:

(i.) "The proof that he has committed or been convicted of such other offence is *admissible*" When accused may be asked

as to the
commission of
other offences.
P. 1074.

When accused
may be asked
questions
tending to
show that he
is of bad
character.

P. 1074.

evidence to show that he is guilty of the offence wherewith he is then charged" (*ib. s. 1 (f) (i.)*). [See *e.g.*, *R. v. Francis (y)*; *R. v. Stephens (z)*; *R. v. Bond (zz)*; *R. v. Forster (a)*; and the provisions as to evidence admissible to show guilty knowledge on the part of "receivers" (*post*, p. 874). See, too, *R. v. Chitson (aa)*]; or (ii.) "He has personally or by his advocate asked questions of the witness for the prosecution with a view to establish his own *good* character, or has given evidence of his good character, or the *nature or conduct* of the defence is such as to involve *imputations on the character of the prosecutor or the witnesses* for the prosecution" (*ib. s. 1 (f) (ii.)*). If the defence, in its nature or conduct, involves the proposition that the prosecutor or one of his witnesses ought not to be believed upon the ground that his *conduct*—not his *evidence* in the case, but his conduct outside the evidence given by him—makes him an unreliable witness, then there is "involved" an "imputation" within the meaning of the section (*R. v. Preston (b)*). But a mere denial of the truth of statements made by witnesses for the Crown, although couched in forcible or abusive terms, does not necessarily "involve" such an "imputation"; as, where a prisoner under cross-examination said in reference to a statement made by the prosecutor: "No, it's a lie, and he is a liar" (*R. v. Rouse and Burrell (bb)*); and see, too, *R. v. Bridgwater (c)*, in which case a prisoner on being charged with stealing metal stated that, in taking possession of it, he had acted under the instructions of a police

(y) *Post*, p. 467.

(z) *Post*, p. 441.

(zz) *Post*, p. 209.

(a) *Post*, p. 391.

(aa) [1909] 2 K. B. 945; 79 L. J. K. B. 10; 53 S. J. 746; 25 T. L. R. 818; 73 J. P. 491.

(b) [1909] 1 K. B. 568; 78 L. J. K. B. 335; 53 S. J. 332; 100 L. T. 303; 25 T. L. R. 280; 73 J. P. 173.

(bb) [1904] 1 K. B. 184; 73 L. J. K. B. 60; 89 L. T. 677; 68 J. P. 14.

(c) [1905] 1 K. B. 131; 74 L. J. K. B. 35; 69 J. P. 26.

sergeant, who was a witness for the prosecution). In *R. v. Sheean* (cc), where a prisoner charged with rape swore that the prosecutrix had consented to intercourse, it was held by Jelf, J., that such defence did not "involve" an "imputation" within the meaning of the Act; but, in *R. v. Preston* (supra), the Court left the point open for further consideration, "as there are special considerations applicable to a charge of rape." And where a prisoner, on oath in her own defence, made a statement to the effect that one of the witnesses for the prosecution had, in fact, committed the offence charged in the indictment, *Darling, J.*, appears to have held that the "nature of the defence" involved such an imputation as justified cross-examination as to character—and this, although the imputation was made as part of the defence and not as an attack on the repute of the Crown witness (*R. v. Kate Marshall*) (d); or,

- (iii.) "He has given evidence *against* any other person charged with the *same* offence" (*ib.* s. 1 (f) (iii)).

Cross-examination of the accused—*contd.*

P. 1074.

This seems to refer to the case of a defendant incriminating his co-defendant, though the phraseology is singularly inapt (cf. *R. v. Martin* (e) and *R. v. Hadwen* (f)).

As to *courts-martial*, see s. 6; APPENDIX, p. 1075.

A person, who is produced merely for the purpose of identification, or called on a *subpoena* to produce a document, is not subject to cross-examination; but other witnesses may be cross-examined on any matters in issue or relevant to the issue, or as to any facts necessary to *explain* relevant facts, whether or no the evidence in chief has been directed to such matters. And it should always be remembered that, if a witness is allowed to make additional statements in relation to new

Cross-examination of witness.

(cc) (1908) 72 J. P. 232; 21 Cox, 561; 24 T. L. R. 459.

(d) 63 J. P. 36.

(e) (1892) 17 Cox, 36.

(f) *Ante*, p. 172.

matter, whether in re-examination or otherwise, the other side is entitled to further cross-examination.

As to former
statements
made by him.

In cross-examination a witness may be asked as to former statements made by him inconsistent with the evidence given in the box; and if he does not admit that he made such statements, proof may be given that he did in fact make them. But, before such proof can be given, the circumstances of the supposed statements must be referred to sufficiently to designate the particular occasion; and, if such statements were reduced into writing, although he may be cross-examined as to them without the writing being shown to him, yet, if it is intended to contradict him by the writing, his attention must be called to the parts of the writing intended to be used before the contradictory proof is given. So, too, if a witness prove (in the opinion of the court) to be adverse (in the sense of hostile, and not merely unfavourable) to the party by whom he is called, he may, subject to the like conditions, be cross-examined as to previous statements made by him (28 & 29 Vict. c. 18, ss. 3, 4). It is often said that a party may not contradict his own witness, but this is true only so far as it means that the party may not discredit his own witness by general evidence of bad character. He may, of course, contradict the witness by the testimony of other witnesses as to matters relevant to the issue (see cases cited in Stephen on "Evidence," 7th edit., p. 212).

Of hostile
witness.

Cross-
examination
as to credit.

As a general rule, when a witness is cross-examined as to credit, his answers to questions directed only to an attack on his character cannot be contradicted; but it is enacted that, if he be questioned as to whether he has been convicted of any felony or misdemeanour and he does not admit it or refuses to answer, the cross-examining party may prove the conviction in manner provided by the Criminal Law Procedure Act, 1865 (28 & 29 Vict. c. 18, s. 6). So, too, if the witness be asked any question "tending to show that he is not impartial, and answers it by denying the facts suggested, he may be contradicted" (Stephen on "Evidence," 7th edit., p. 148). As to impeaching the credibility of a witness by the testimony of those who state that they do not regard him as worthy of credit upon his oath, see *post*, p. 871.

Extradition of Criminals.

We have seen that any justice, upon information that a person has committed an indictable offence within his jurisdiction, may at once grant a warrant for his arrest. This warrant could not, of course, be executed upon foreign soil; but, if the accused has escaped to a country with which we have a reciprocal treaty for the purpose of enabling this to be done, the warrant should be forwarded, with the evidence on which it was granted, and an indemnity for expenses, to the Home Secretary, who is authorized thereupon to take steps which may result in the foreign authorities either executing the warrant themselves and delivering the offender to an officer from this country, or giving such officer an opportunity of effecting the arrest himself (33 & 34 Vict. c. 52; 36 & 37 Vict. c. 60).

Where
offender has
fled the
country.

The subject is not really within the scope of this work, but it may be observed that, in case a crime has been committed in a country with which arrangements have been made, and the accused has escaped to England, a requisition for the surrender of this foreign fugitive may be made to the Home Secretary by the diplomatic representative of the country in question, and the former may then cause the accused to be brought before a metropolitan police magistrate or a stipendiary magistrate (*ib.*; 58 & 59 Vict. c. 33). Should the magistrate be satisfied that the prisoner is charged with an "extradition" crime, and that the evidence is such as would justify his committal for trial had the offence been committed in England, the prisoner will then be sent to gaol to await the Home Secretary's warrant for his surrender to take his trial abroad for the offence in respect of which he has been surrendered (cf. *Re Woodall (g)*; *R. v. Lushington*; *Ex parte Otto (h)*). The "extradition crimes" include the graver varieties of violence, theft, bribery, and fraud; but the accused will not be surrendered if the offence be merely of a political character. It has, however, been held that to constitute a political offence there must be two parties in the State, each seeking to impose the government of

Where
offender has
taken refuge
in England.

"Political"
offence.

(g) (1888) 57 L. J. M. C. 72; 59 L. T. 549; 52 J. P. 646.

(h) [1894] 1 Q. B. 420; 58 J. P. 282.

their choice on the other, so that anarchist crimes are not within this privilege (*In re Meunier* (i) ; and cf. *In re Castioni* (k)). As to the procedure in *urgent* cases, see 33 & 34 Vict. c. 52, s. 8 (ii.).

If the prisoner seeks to dispute the jurisdiction of the magistrate, he may apply, within fifteen days, for a writ of *habeas corpus* (*Ex parte Maurer*) (l).

Treaties of reciprocity exist between this country and the Argentine Republic, Austria-Hungary, Belgium, Bolivia, Brazil, Chili, Colombia, Denmark, Ecuador, France, Germany, German Dependencies, Guatemala, Hayti, Italy, Liberia, Luxemburg, Mexico, Monaco, Netherlands, Portugal, Roumania, Russia, Salvador, San Marino, Servia, Spain, Sweden, Norway, Switzerland, Tonga, United States of America, Panama, and Uruguay ; but the police in other countries will, on request, frequently deliver up an offender. See *H. O. Circular* of Dec. 1st, 1903.

Fugitive
Offenders
Act, 1881.

As to offences committed in one part of the King's dominions by persons who have escaped to another part, see the Fugitive Offenders Act, 1881 (44 & 45 Vict. c. 69), and *R. v. Spilsbury* (m). Colonial law, in such cases, must be proved, like foreign law, *i.e.*, by the evidence of experts (*R. v. Governor of Brixton; Ex parte Percival*) (n).

As to *bail*, see *R. v. Hole* (o).

Industrial and Reformatory Schools.

Industrial Schools.

The expression "industrial school" means a school for the industrial training of "children," in which children are lodged, clothed and fed, as well as taught. When the managers have obtained the certificate of a Secretary of State that the school is fit for the reception of children, it becomes "certified," and it is to such schools that reference is hereinafter made; though it is to be borne in mind that the managers may, at the outset,

(i) [1894] 2 Q. B. 415 ; 63 L. J. M. C. 198.

(k) [1891] 1 Q. B. 149 ; 60 L. J. M. C. 22.

(l) (1883) 10 Q. B. D. 513 ; 52 L. J. M. C. 104.

(m) [1898] 2 Q. B. 615 ; 79 L. T. 211 ; 62 J. P. 600.

(n) [1907] 1 K. B. 696 ; 76 L. J. K. B. 619 ; 71 J. P. 148.

(o) (1898) 62 J. P. 616.

"decline to receive" any child proposed to be sent to them ("Children Act, 1908," 8 Edw. 7, c. 67, ss. 44, 45, 52).

A child, *apparently under the age of fourteen years*, may be brought by *any* person before a "petty sessional court" (*post*, p. 1068) and committed to an INDUSTRIAL SCHOOL if the court thinks it expedient and it is shown that the child :

Children
liable to be
sent to
industrial
schools.

- (i.) was *found* (a) begging or receiving alms (whether or not there is any pretence of singing, playing, performing, offering anything for sale or otherwise), or being in any street, premises, or place for the purpose of so begging or receiving alms ; or (β) wandering and not having any home or settled place of abode, or visible means of subsistence ; or (γ) wandering and having no parent or guardian, or a parent or guardian who does not exercise proper guardianship ; or (δ) destitute, not being an orphan and having both parents or his surviving parent (or in the case of an illegitimate child, his mother) undergoing penal servitude or imprisonment.

Form 11, and
Sch. B. *post*,
pp. 1146, 1153.

The expression "street" includes any highway, and public bridge, road, lane, footway, square, court, alley or passage, whether a thoroughfare or not. If a person habitually wanders from place to place and takes with him a child above the age of five, he shall (unless he proves that the child is totally exempted from school attendance or is not prevented from receiving efficient elementary education) "be deemed not to be exercising proper guardianship over the child." But see certain exemptions in respect of persons whose trade requires them to travel, p. 933.

- (ii.) is under the care of a parent or guardian who, by reason of criminal or drunken habits, is unfit to have such care.
- (iii.) is the daughter, legitimate or illegitimate, of a father who has been convicted of an offence under s. 4 or s. 5 of the Criminal Law Amendment Act, 1885 (*post*, pp. 364, 365), in respect of any of his daughters, legitimate or illegitimate.
- (iv.) frequents the company of any reputed thief, or

Form,
Sch. B. (d),
p. 1153.

Form,
Sch. B. (e),
p. 1153.

Form,
Sch. B. (f),
p. 1154.

Children
liable to be
sent to
industrial
schools—
contd

Form.
Sch. B. (g),
p. 1154.

"Duty" of
"police
authority."

Summons to
enforce
attendance
of parents or
guardian.

Application
to "young
persons."

Child under
12 charged
with crime.

Form.
Sch. B. (h),
p. 1154.

Child
between 12
and 14

of any common or reputed prostitute. This provision does not apply where the prostitute is the mother of the child if she exercises "proper guardianship and due care to protect the child from contamination."

(v.) is lodging or residing in a house or the part of a house used by any prostitute for the purposes of prostitution, or "is otherwise living in circumstances calculated to cause, encourage, or favour the seduction or prostitution of the child" (8 Edw. 7, c. 67, ss. 58 (i.), 118, 131).

It is the "duty" of the "police authority," within the meaning of the Police Act, 1890, in any of the foregoing cases to take proceedings "as respects" any child in their district who "appears to the authority" to come within the sub-section, unless the case is "within the cognizance" of the education authority and that authority act, or proceedings are being taken by some other person, or the police authority "are satisfied" that the taking of proceedings is "undesirable in the interests of the child" (*ib.* s. 58 (viii.)).

Process may issue to enforce the attendance of a parent or guardian in the same manner as if an information were laid or complaint made (see APPENDIX, *post*, p. 1139, and FORMS, pp. 1140, 1141).

A "young person," apparently "of the age of fourteen or fifteen years," who is "so circumstanced" that if he were a child he would come within one or other of the above descriptions, may, by order, be committed, on the application of "any person," to the care of "a relative or other fit person" under Part II. of the Act, which relates to the Prevention of Cruelty to Children (*post*, p. 381; *ib.* s. 59).

There are also other cases in which the court may send children under fourteen to industrial schools, viz. :—

(vi.) Where a child, *apparently under the age of twelve years*, is charged with an offence punishable in the case of an adult by penal servitude or a less punishment (*ib.* s. 58 (ii.)).

(vii.) Where a child *apparently of the age of twelve or thirteen years, who has not been previously convicted*, is charged as in (vi.). The court must be

satisfied that, in the special circumstances, it is not desirable to commit to a reformatory, that the child will not "exercise an evil influence over the other children," and that the managers will receive the child. The Secretary of State may transfer to a reformatory (*ib. s. 58 (iii.)*).

charged with crime and not previously convicted.

Form,
Sch. B. (i),
p. 1154.

- (viii.) Where the parent or guardian (*i.e.*, the person having, for the time being, the charge of or control over the child) satisfies the court that he is unable to control a child under fourteen, desires the child to be committed, and "understands the results which will follow." In lieu of committal the court may place the child under the supervision of a probation officer as though charged with an offence and dealt with under the Probation of Offenders Act, 1907; but the recognizance on discharge must bind the child "to appear for having a detention order made against him" (*ib. s. 58 (iv.)*).

Child under 14 beyond control.

Form,
Sch. B. (j),
p. 1154.

- (ix.) Where the guardians of a poor law union, or the managers of a district poor law school, satisfy the court that a child maintained in the workhouse or school is refractory, or is the child of parents either of whom has been convicted of an offence punishable with penal servitude or imprisonment, and that it is desirable that the child should be committed (*ib. s. 58 (v.)*).

Child under 14 in workhouse, &c., refractory or the child of a convicted parent.

Form,
Sch. B. (k),
p. 1155.

As to the cost of maintenance of the child in such cases see *ib. s. 74 (xi.)*.

- (x.) A child, whose parent has disobeyed an "attendance order" made by a court of summary jurisdiction under the Elementary Education Acts, may be sent to a day industrial school, or, if there be no such school suitable, then to an industrial school. In the *first* case of non-compliance this course cannot be taken unless the court is satisfied by the parent that he has used all reasonable efforts to ensure compliance with the order (*ib. s. 58 (vi.)*; 39 & 40 Vict. c. 79, s. 12; see *post*, p. 428). But, if, upon any such complaint, it appears that the child comes within any one of the classes (i.) to (v.) inclusive, the court may, on the application of the local education authority,

Child whose parent has disobeyed an attendance order.

Form,
Sch. B. (l, m),
p. 1155.

proceed to commit under sub-s. (i.) of 8 Edw. 7, c. 67, s. 58; *ante*, pp. 181, 182.

Presumption
as to age.

The court must make due inquiry as to the *age* of the child or young person and must take such evidence as may be forthcoming at the hearing; but an *order* when made with respect to the child or young person is not to be invalidated by *subsequent proof* that the age was incorrectly stated. The age presumed or declared by the court to be the age "shall for the purposes of this Act, be deemed to be the true age of that person" (8 Edw. 7, c. 67, s. 123 (i.)). If the child referred to in a charge or indictment under the Act *appears* to the court to be of the age alleged, he may be *presumed* to be so until the contrary is proved (*ib.* s. 123 (ii.)). But the apparent age may be proved to be incorrect (*ib.* s. 123 (iv.)); and as the statute expressly imposes on the court an obligation to make "due inquiry," it would seem that an order might still be quashed on *certiorari* if justices acted on the bare, incorrect statement of an official, as in *R. v. Birmingham JJ.* (q).

Evidence of
wages of
defendant.

In any proceedings under the Children Act, 1908, a copy of an entry in the wages book of an employer, or, if no wages book be kept, a written statement signed by the employer or any responsible person in his employ, is *prima facie* evidence that the wages therein appearing to have been paid have in fact been so paid (*ib.* s. 124).

Documents.

No summons, notice, or order is to be invalidated for "want of form only" (*ib.* s. 87 (iv.)); and as to service of notices on the managers of a school, see *ib.* s. 87 (iii.); as to proving an order of a court or the rules of the school (*ib.* s. 88 (iv.) (v.)), and the fact of detention (*ib.* s. 88 (iii.)). As to securing the attendance at the hearing of the parent or guardian, see *ante*, p. 182.

The order of
detention.

Form. 11.
post, p. 1146.

As to *day*
industrial
schools, see

App., p. 1157.

The order of detention (which may take effect either immediately or at a later specified date) must specify the name of the school; or, if this be impossible, the school will be such as a justice having jurisdiction where the court sat may, by indorsement on the order, afterwards direct. In case of mental or physical defect, the school must, where practicable, be one in which provision is made

for training children suffering from such defect. The court must, too, endeavour to ascertain the "religious persuasion" of the child, and, where practicable, state the result in the order and select a school conducted in accordance with that persuasion. If such a school be not selected in the first instance, provision is made enabling the "parent, legal guardian, nearest adult relative, or person entitled to the custody of the child," to apply, within thirty days of the child's arrival at the school, for his removal to a fitting school. The application must be made to a court acting in and for the place where the court which made the order acted; but, if the thirty days have elapsed, application may be made to the Secretary of State to exercise his general power of transfer (*ib.* ss. 61, 62, 66). In lieu of ordering the child to be sent to an industrial school, the court may commit him to the care of a relative, &c., under Part II. of the Act (*post*, p. 381; *ib.* s. 58 (vii.)) ; and, where a child or young person is so committed, he may be placed under supervision under the Probation of Offenders Act, 1907 (*ib.* s. 60). Provision is also made for the *temporary* detention of the child by a relative or other fit person until he can be sent to the school, or he may be committed as though he were a youthful offender "on remand" (*ib.* s. 63). The order must specify the *time* for which the child is to be detained, "not in any case extending beyond the time when the child will, in the opinion of the court, ATTAIN THE AGE OF SIXTEEN YEARS" (*ib.* s. 65).

Committal to care of "fit person."

Temporary detention.

Period of detention.

If in possession of the necessary information, the court must also make an order on the *parent* or other person for the time being "liable to maintain" the child (and the order may be made on such person although a parent be alive) for payment to the "chief inspector" of a *weekly sum* not exceeding the amount "declared by Order in Council to represent approximately the average cost of *maintenance* of children in that class of school" (*ib.* s. 75; and see Order in Council, *April 2nd*, 1909, S. R. and O., 1909, No. 344). Such an order may be made, at any time during the child's detention, on complaint at the instance of the "chief inspector," by any petty sessional court having jurisdiction at the place where such parent or other person resides. It is the "duty of a constable," if required by the chief "inspector,"

Order for contribution by parent, &c.

Forms 12, 13,
post, p. 1147.

As to *day* industrial schools, see **App.**, *post*, pp. 1160, 1162.

Order for
contribution
by parent,
&c.—*contd.*

to take proceedings on behalf of the latter (*ib.* s. 75 (ix.)). If the detention order is made at assizes or quarter sessions, the case may be remitted to the committing court to make the order for contribution. The contribution order may specify the time (being the whole or any part of the period of detention) during which payment is to be made, or may direct payment to be made until further order (*ib.* s. 75 (iii.)). A copy of the order must be sent by the justices' clerk to the chief inspector within three days (APPENDIX, *post*, p. 1139). The persons "liable to maintain" the child "include" his step-parent, and (if the court thinks fit) a person cohabiting with his mother, and, in case of illegitimacy, his putative father; though, if there exists an affiliation order, the court must not (unless in view of special circumstances) order the putative father to contribute, but may direct the whole or any part of payments accruing under the affiliation order to be made to the "chief inspector" or other named person (*ib.* s. 125). This section will probably give rise to difficult questions as to the obligations of step-parents, and as to the ascertainment of the "putative father" where there is no bastardy order in existence. If the person on whom the order of contribution is made was not summoned to attend the court, such order must be served on him in manner "prescribed by the rules" and will then be binding unless he applies to the court within the "time prescribed," to rescind or modify it (*ib.* s. 75 (v.)). The "time prescribed" is one month after service of the order (APPENDIX, *post*, p. 1139); and as to mode of service, see *Rule 3, post*, p. 1139.

Variation of
order of
contribution.

Any court having power to make such an order may *vary* it, on application (after fourteen days' notice to the party affected), either by the person on whom it is made or at the instance of the "chief inspector." The Secretary of State may remit the whole or any part of the payments (*ib.* s. 75 (iv.) (viii.)).

Attaching
pensions, &c.,
and varying
trusts.

Where the parent or other person enjoys "any pension or income capable of being attached," the court, "after giving the person by whom the pension or income is payable an opportunity of being heard," may make a further order directing any part to be attached and paid to the person named by the court (*ib.* s. 75 (xi.)); and where a

child is removed from the care of any person who is entitled under any *trust* to receive money for its maintenance, the court may (subject to an appeal to quarter sessions) vary the trust, and give directions as to the application of the money (*ib. s. 127*).

The order for contribution is "enforceable as an order of affiliation," *i.e.*, the person on whom it is made may be arrested on warrant and committed to prison without any proof of means being given (*post*, p. 306; *ib. s. 75 (iii.)*). The Schedule of Forms contains one of "Summons for Arrears" (No. 17, *post*, p. 1149); but it would seem that a warrant of distress or a commitment order could not issue in case the person summoned failed to appear (*cf. post*, p. 306). The statute, in express terms, requires the order to be enforced "as an order of affiliation" (see *ante*, p. 60). A certificate "purporting to be under the hand of the chief inspector, or an inspector or assistant inspector," stating that a sum is overdue and unpaid by the parent or other person, "shall be evidence of the facts stated therein" (*ib. s. 88 (vi.)*). As to *day* industrial schools, see APPENDIX, *post*, p. 1160. Such parent or other person must, too, "give notice of *any change of address*" to the "chief inspector" under PENALTY, on summary conviction, of a fine not exceeding 2*l.*, recoverable by distress, and, in default, imprisonment, without hard labour, according to scale (p. 111; *ib. s. 75 (vi.)*).

Every child sent to an industrial school (unless for the purpose only of enforcing an "attendance order," *post*, p. 428) will, from the expiration of the period of his detention, remain under the supervision of the managers up to the age of *eighteen*. As a result it will "not be lawful for his parent to exercise his rights and powers as parent in such a manner as to interfere with the control of the managers"; and these same managers may send out the supervisee "on licence," may recall him and detain him for three months before again placing him out "on licence" (*ib. s. 68*). As to *revocation* of licence, see p. 571.

With the consent of the child when detained or "on licence," or of the young person under such supervision, the managers may "apprentice him to, or dispose of him in, any trade, calling, or service, *or by emigration*." But, if he is to be "disposed of by emigration," or, in any case

Enforcing
order for
contribution.

Forms 16-21,
post, p. 1149.

Supervision
after period
of detention.

Power to
apprentice
or dispose
of child or
young person.

Application
by local
authority
aggrieved by
decision as to
"residence"
of child.

unless he has been detained for twelve months, the consent of the Secretary of State is also required (*ib.* s. 70).

The local "education authority" of the district in which the child "resides" (*i.e.*, where the circumstances occurred, unless he is proved to reside elsewhere) must, speaking generally, provide for his maintenance in the school; and the order of detention must not be made unless such authority "have been given an opportunity of being heard." Even when the child is dealt with at assizes or quarter sessions, the committing court is to determine the "place of residence" (*ib.* s. 74 (ii.), (iii.), (iv.), (v.), (vi.)). If the authority is aggrieved by the decision as to residence, application may be made, *within three months*, to a "petty sessional court" for the place where such decision was given; and, on proof that the child was really resident in another local authority (which has also been given an opportunity of being heard), the liability to maintain may be transferred to the latter authority, which may be ordered to repay any expenses already incurred. An appeal to quarter sessions lies from a decision given on such an application (*ib.* s. 74 (vii.)).

"Day"
industrial
schools.

The provisions of Part IV. of the Act with respect to industrial schools apply, so far as applicable, to "certified day industrial schools." Modifications may be made by Order in Council, which may provide that a child may be punished for an offence by being sent to a "certified industrial" in lieu of a "certified reformatory" school, or may otherwise mitigate any punishment imposed in relation to industrial schools (*ib.* s. 83). See Order in Council of *April 2nd*, 1909, APPENDIX, *post*, pp. 1157.

Form 14.
post, p. 1148.

Any child "authorized to be sent" to an industrial school may, if the court thinks fit, be sent to a "day" industrial school. The school need not be within the jurisdiction of the court, but must be within such distance of the child's residence as shall be prescribed by Order in Council (*ib.* s. 78. See Order in Council, APPENDIX, *post*, p. 1159). The *distance* is within $2\frac{1}{2}$ miles of the child's residence. The court *must* also order the parent, or other person liable to maintain the child, to pay a specified sum not exceeding the sum "declared by Order in Council to represent approximately the average cost of industrial training and meals" in such a school (see Order in Council, APPENDIX, *post*, p. 1160). If the

parent, &c., is unable to pay, he is required to apply to the poor law guardians (*ib.* s. 82).

The *period of detention* must not extend beyond the time when the child will, in the opinion of the court, attain *fourteen* (APPENDIX, p. 1157).

Upon the request of the education authority and of the parent, &c., and upon the undertaking of the parent, &c., to contribute to the maintenance, the managers may receive the child into the school under an "attendance order," or without an order of the court (*ib.* s. 79). See Order in Council, APPENDIX, *post*, p. 1157; and Forms in Schedules "A." and "B.", *post*, p. 1162. If sent under an order (other than an attendance order) the child may be detained during the authorized hours (*ib.* s. 78).

As to OFFENCES in connection with Industrial Schools, see *post*, p. 570.

Reformatory Schools.

The expression "reformatory school" means a school for the industrial training of "youthful offenders," in which such youthful offenders are lodged, clothed, and fed, as well as taught. These schools may be "certified," as in the case of "industrial schools," and the managers may "decline to receive" any youthful offender proposed to be sent to them (Children Act, 1908 (8 Edw. 7, c. 67), ss. 44, 45, 52).

A youthful offender who, in the opinion of the court, is *twelve years of age or upwards*, but less than *sixteen years* of age, may be sent to a certified REFORMATORY SCHOOL if he be *convicted* of an OFFENCE punishable (in the case of an adult) with penal servitude or imprisonment (*ib.* s. 57(i.)).

The order of commitment may be "in addition to, or in lieu of, sentencing him according to law to any other punishment," but he must not, in addition, be sentenced to imprisonment. If the offender be of the age of *fourteen years or upwards* and no school can be found the managers of which are willing to receive him, the Secretary of State may order the offender to be again brought before the court, "or any court having the like jurisdiction," and the court may make any such order or pass any such sentence as might have been ORIGINALLY made or passed (*ib.* s. 57(ii.)).

"Day"
industrial
schools—
contd.

Form 15,
post, p. 1148.

Commitment
of offenders
between 12
and 16 to
reformatory
schools.

Form 10,
post, p. 1145.

Reformatory
schools—
contd.
Period of
detention.

The detention order must specify the time for which the youthful offender is to be detained, not *less* than *three* and not *more* than *five* years; but not in any case extending beyond the time when he will, in the opinion of the court, attain the age of *nineteen years* (*ib.* s. 65).

If the period of detention expires before the offender attains nineteen, he will remain under the "supervision" of the managers until that age (*ib.* s. 68). As to the incidents of such supervision, see *ante*, p. 187.

Provisions
relating to
"industrial
schools"
which
extend to
reformatories.

The following provisions already set forth (pp. 184—187) in connection with the detention of "children" in "industrial schools" apply also to the commitment of "youthful offenders" to "reformatory schools," viz.: those relating to PRESUMPTION OF AGE (*ib.* s. 123 (i.) (iv.)); EVIDENCE OF WAGES OF DEFENDANT (*ib.* s. 124); THE ORDER OF DETENTION (*ib.* ss. 61, 62, 66, as to power to defer operation of order, choice of school, and provisions as to religious persuasion); TEMPORARY DETENTION (*ib.* s. 63); ORDER FOR CONTRIBUTION BY PARENTS, &c. (*ib.* ss. 75, 125); VARIATION OF ORDER OF CONTRIBUTION (*ib.* s. 75 (iv.), (viii.)); ATTACHING PENSIONS, &c. (*ib.* s. 75 (xi.)); VARIATION OF TRUSTS (*ib.* s. 127); ENFORCING ORDER OF CONTRIBUTION (*ib.* ss. 75 (iii.), 88 (vi.)); NOTIFICATION OF CHANGE OF ADDRESS (*ib.* s. 75 (vi.)); POWER TO APPRENTICE OR EMIGRATE (*ib.* s. 70).

Application
by county
council
aggrieved
by decision as
to residence.

Where a "youthful offender" is sent to a "reformatory school," his maintenance is provided for by the council of the county or county borough in which he "resides," and he is presumed to reside where the offence was committed, unless it is proved that he resided in some other place (*ib.* s. 74 (i.), (iii.)). The detention order must specify the place of "residence"; and, even if it be made at assizes or quarter sessions, the case must be remitted to the court whence the youth was committed for trial to determine his place of residence (*ib.* s. 74 (iv.)). If the county council are aggrieved by the decision as to "residence," they may, *within three months*, apply to a "petty sessional court" with a view to fixing liability on some other authority as in the case of an industrial school (*ante*, p. 188); and appeal lies to the quarter sessions (*ib.* s. 74 (vii.)).

As to OFFENCES in connection with Reformatory Schools, see *post*, p. 874.

Recognizances.

A recognizance is, in legal phrase, an "obligation of record" which a man enters into before some court, magistrate, or officer duly authorized, and it is conditioned to do some particular act, such as to appear at a certain time and place, to prosecute an appeal, to keep the peace, or the like. This obligation may be entered into either upon one's own account, or as guaranteeing the act of another. The form of the recognizance is given *post*, p. 1110 (No. 36).

Nature of a
recognizance.
Form,
p. 1110.

Should the condition be broken, the recognizance is liable to be estreated, that is to say, *extracted* from the other records for the purpose of enforcement; and the party and his sureties (if any), having thus become absolute debtors of the Crown, are liable in the sums for which they stood respectively bound. The recognizance of a married woman may be taken if she is possessed of separate estate; and, in the case of a limited company, it is usual to take the recognizance of an authorized director (cf. *Southern Counties, &c., Bank v. Boaler*) (*r*). As to the London County Council, see 56 & 57 Vict. c. cxxi., s. 11.

When a court of summary jurisdiction has fixed the amount in which the principal and the sureties are to be bound, the recognizance need not be entered into before such court, but may be entered into before *any other court*, or before a *superintendent or inspector of police* or other officer of police of equal or superior rank or in charge of any police station, or, where any of the parties is in prison, before the governor or other *keeper of such prison* (42 & 43 Vict. c. 49, s. 42). For form of "Order to bring up a Prisoner" before a court that he may enter into a recognizance, see No. 44, *post*, p. 1113.

May be taken
out of court.

Where a court of summary jurisdiction has fixed as respects any recognizance the amount in which a principal and a surety or sureties are to be bound, the governor of a prison cannot be required to take the recognizance of any person proposed as surety, unless the person so proposed produces a certificate in writing from a court of summary jurisdiction, or a clerk thereof,

P. 1048.

Governor of
prison may
require
certificate of
sufficiency.

P. 1087.

that he has satisfied the court or clerk of his ability to pay the amount for which he is to be bound in the event of the recognizance becoming forfeited (Summary Jurisdiction Rules, 1886, r. 13). The form of the "Certificate of Ability of Surety to Pay" is prescribed by r. 13a of December 30th, 1903 (see *post*, pp. 1087, 1115).

Estreating
recognizances.

In former times recognizances could be estreated only at quarter or general sessions to which they were transmitted for the purpose of enforcement. Special provision was, however, made by the Summary Jurisdiction Act, 1879, for the enforcement of recognizances entered into in proceedings *before courts of summary jurisdiction*. Such recognizances are now dealt with as follows:—

When conditioned to appear, &c., before court of summary jurisdiction.

Whenever a recognizance is *conditioned for the appearance of a person* before a court of summary jurisdiction, or *for his doing some other matter to be done in any proceeding in such court*, the court, if of opinion that the recognizance is forfeited, may itself declare such to be the case, and may enforce payment of the amount due thereunder by distress, as if the same had been a fine imposed upon a conviction. At any time, however, before sale under a warrant of distress, the court or any other court of summary jurisdiction for the same county, borough or place may *cancel or mitigate* the forfeiture on such conditions as may seem just (42 & 43 Vict. c. 49, s. 9 (i)). The form of "Summons for Forfeiture of Recognizance" is given *post*, p. 1092 (No. 3); those of "Indorsement of Forfeiture" and "Indorsement mitigating Forfeiture" *post*, p. 1111 (Nos. 37, 38).

P. 1028.

When conditioned to keep peace, be of good behaviour, &c.

Where a recognizance *conditioned to keep the peace or to be of good behaviour, or not to do or commit some act or thing*, has been entered into by any person as principal or surety before a court of summary jurisdiction, such court, or any court of summary jurisdiction for the same county, borough, or place, upon proof of the *conviction* of the principal of any offence amounting in law to a breach of the condition, may, by conviction, declare such recognizance to be forfeited, and adjudge both principal and sureties, or any of them, to pay the sums for which they may be severally bound. A person seeking to put in force a recognizance *to keep the peace or be of good behaviour*, may, by notice in writing, insist upon the recognizance being transmitted for enforcement to the

general or quarter sessions; and it must be noted that the surety cannot surrender the principal as in case of "bail" (42 & 43 Vict. c. 49, s. 9 (ii), (iii)). The form of "Summons for Forfeiture of Recognizance" is given *post*, p. 1092 (No. 3); and that of "Conviction (Forfeited Recognizance)" *post*, p. 1097 (No. 13); see also under title "SURETY OF THE PEACE, &c.," *post*, p. 897. P. 1028.

All sums paid in respect of recognizances, adjudged by a court of summary jurisdiction to be forfeited, are to be paid to the clerk of the court and applied by him as though they were *finer* in respect of which *no special appropriation* had been made, that is to say, they are to be handed to the treasurer of the county, borough, or place for which the justices acted (42 & 43 Vict. c. 49, s. 9 (iv); 11 & 12 Vict. c. 43, s. 31). For the general provisions as to the levying of fines, see Paley on "Summary Convictions," 8th edit. pp. 346—351; and see *post*, p. 204. Appropriation of forfeitures.

Where, in the case either of imprisonment or fine, there is prescribed a requirement for an offender to enter into his recognizance or find sureties, the court has power to *dispense* with the requirement wholly or in part (42 & 43 Vict. c. 49, s. 4). Dispensing with recognizances.

Recognizances for appearance in the case of an *indictable* offence are provided for by s. 21 of the Indictable Offences Act, 1848 (*post*, p. 974; and Forms *post*, pp. 991, 992); but they may now be entered into under the above provisions of the Act of 1879. P. 1029.
P. 1015.

Restitution of Stolen Property,

and

Compensation for Loss occasioned by Felony.

The act of theft, which removes goods from the *possession* of their owner, does not in the least degree affect his *property* in them. If, however, the goods were subsequently sold in *market overt* to a *bonâ fide* purchaser, the latter would obtain the *property* in the goods. Moreover, if the goods, instead of being stolen, are obtained by false pretences or some other fraud in such circumstances that the *property* in the goods passes away from the original owner, such property may be transferred to *any bonâ fide purchaser* (see *post*, p. 465). Effect of conviction is to revest property in original owner.

But, in the case of *stolen* goods (as distinguished from goods *obtained by fraud*), whatever may have been the nature of the dealings with the goods in the interval, if criminal proceedings be taken which result in the *conviction* of the person who stole the goods, the property therein is at once restored to the original owner, *i.e.*, the prosecutor (24 & 25 Vict. c. 96, s. 100). Where, however, goods have been obtained by fraud or other wrongful means *not amounting to larceny*, the property in the goods will not revert in the person who was the owner of the goods, or his personal representative, *by reason only of the conviction* of the offender (56 & 57 Vict. c. 71, s. 24).

Exceptions.

There are, moreover, two exceptions to this doctrine of restoration upon conviction—one, in the case of valuable securities and negotiable instruments, which, after being stolen, have been *bonâ fide* discharged by the person liable thereon or received by third parties for good consideration and without notice of any defect in title; the other, in the case of prosecutions against trustees, factors, or agents in respect of the misappropriation of chattels entrusted to their care (24 & 25 Vict. c. 96, s. 100).

Speaking generally, then, the effect of *conviction* is to restore *stolen* property to the prosecutor, who might at once maintain an action to obtain the goods from the person in whose possession they may happen to be at the time of such conviction.

Summary mode of obtaining restitution.

But, in order to obviate the necessity for such an action, the court before whom the prisoner is tried is empowered to award writs of restitution for the property or to order the restitution thereof in a summary manner (24 & 25 Vict. c. 96, s. 100). And this power to compel restitution in a summary manner extends not only to the stolen property itself, but also to the *proceeds* of such property, provided that such proceeds are either in the hands of the criminal himself or in the hands of some agent who holds them for him (*R. v. Justices of Central Criminal Court*) (s). So far as *stolen money* is concerned, the section appears to be limited to cases where the money or the proceeds of it are found on the thief, or in the possession of someone

Stolen money.

(s) (1887) 18 Q. B. D. 314; 56 L. J. M. C. 25; 56 L. T. N. S. 352; 51 J. P. 229.

taking from him *otherwise than by money passing as currency*. It will apply to current coin stolen before it has passed into currency and afterwards sold as a curiosity (*Moss v. Hancock*) (t).

And when an indictable offence is dealt with *summarily* under the Summary Jurisdiction Act, 1879, the conviction has the same effect as a conviction for the like offence upon indictment; so that the justices may make the like order for the restitution of the property as might have been made by the court before whom the person convicted would have been tried had the trial been on indictment (42 & 43 Vict. c. 49, s. 27 (iii.)).

Moreover, if it should appear that goods feloniously taken or fraudulently obtained have been pawned with a pawnbroker for a sum not exceeding 10*l.*, the justices may, if they think fit, make the order for the delivery up to the prosecutor conditional on payment to the pawnbroker of the loan or of any part thereof as to the court (having regard to the conduct of the owner and the other circumstances of the case) may seem just and fitting (35 & 36 Vict. c. 93, s. 30). A similar award may be made in any proceedings in the course of which goods, which have been unlawfully pawned, are brought before the court (see *post*, p. 753).

Again, when a prisoner is *convicted* either summarily or otherwise of larceny or of any other offence which includes the stealing of property, and it appears that he sold such property to a person who had no knowledge that it was stolen, the court may, upon the application of such purchaser, and on the restitution of the stolen property to the prosecutor, order that, out of any moneys taken from the prisoner on his apprehension, an amount not exceeding the proceeds of such sale be handed to the *bonâ fide* purchaser (30 & 31 Vict. c. 35, s. 9).

Provision was also made for an order to recover, from a person convicted of *felony*, the whole or any part of the costs and expenses incurred in and about the prosecution. The court might order payment to be made out of any moneys taken from the accused on his apprehension, or might direct that payment of the amount be enforced

Extends to cases tried in courts of summary jurisdiction.

P. 1040.

Power to award compensation to pawnbroker in certain cases.

Power to award compensation to *bonâ fide* purchaser out of moneys found on prisoner.

Power to compel defendant to pay costs on conviction for felony or other indictable offence.

(t) [1899] 2 Q. B. 111; 68 L. J. Q. B. 657; 80 L. T. 693; 47 W. R. 698; 63 J. P. 517.

as though it were the amount of costs ordered to be paid by judgment in a civil action (33 & 34 Vict. c. 23, s. 3). And it is now provided that the court by or before which a person is convicted of *any indictable offence* may, in addition to any other punishment, order the person convicted to pay the whole or any part of the costs incurred in or about the prosecution and conviction, including any proceedings before the examining justices, as taxed by the proper officer of the court. Such costs may be recovered as a "civil debt" (*ante*, p. 118), or payment may be enforced out of "any money taken on his apprehension from the person convicted, so far as the court so directs" (8 Edw. 7, c. 15, s. 6 (i.) (v.)).

P. 1081.

Power to award compensation to any person for loss occasioned by felony.

Again, in case of *conviction for felony*, the court may award to any person a sum not exceeding 100*l.* by way of satisfaction or compensation for loss of property suffered by the applicant through or by means of the felony. It will be observed that this provision does *not* extend to cases of *misdemeanour*, nor to any damage except loss of *property*.

The amount awarded is to be deemed a judgment debt, and payment may be directed to be made out of any moneys taken from the accused on his apprehension, or payment of the amount may be enforced as though it were the amount of costs ordered to be paid by judgment in a civil action (33 & 34 Vict. c. 23, s. 4).

Order under Probation of Offenders Act, 1907, the like effect as a *conviction*.

Where an *order* is made under s. 1 of the Probation of Offenders Act, 1907 (see *ante*, p. 101), such *order* has, for the purpose of revesting or restoring stolen property, the like effect as a *conviction*. The court will also be enabled to make orders as to the restitution or delivery of property to the owner and as to the payment of money upon or in connection with such restitution or delivery (7 Edw. 7, c. 17, s. 1 (iv.)).

Power to make orders with respect to property in the possession of the police.

It should be noticed that, if the prisoner is *acquitted*, there is no foundation for the making of an order of restitution, &c. But where property has come into the possession of the police *in connection with any criminal charge*, a court of summary jurisdiction may, on application either by a police officer or by a claimant of the property, make an order for the delivery of the property to the person appearing to be the owner thereof, or, if the owner cannot be ascertained, make such order with respect to the property as may seem meet (60 & 61 Vict.

c. 30, s. 1 (i.)). As to the right of the "possessor" as against anyone who cannot show a better title, see per *Wills, J.*, in *The Queen v. D'Eyncourt* (21 Q. B. D. at p. 125). "The possession she (the defendant) once had," said the learned judge, "would give her the right to recover the money from any one who could not show a better title. This would be so even if the money had been obtained by false pretences from persons who with knowledge of the facts advisedly abstained from making any claim, or if nothing could be shown as to who was really entitled." The order will not affect the right of any person to take proceedings for recovery within six months from the date of the order; but, at the expiration of *six months* from the date of the order, the right of a person in possession of property delivered thereunder will become absolute. And as to the power of justices to deal with property seized by the police after a search made under the Prevention of Crime Act, 1871, see *post*, p. 402. As to the metropolitan police district, see 2 & 3 Vict. c. 71, ss. 27—29, and *R. v. D'Eyncourt (u)*.

Property in possession of police—*contd.*

It may be mentioned that, where property is taken from any person charged before a court of summary jurisdiction with an offence punishable either on indictment or on summary conviction, a report must be made to the court by the police giving particulars of such property, and the court must direct the whole or a part of such property to be returned to the accused or his agent if this step can be taken consistently with the interests of justice and the safe custody of the accused (42 & 43 Vict. c. 49, s. 44).

Order for return of property to the accused.

P. 1050.

As to the power of the court to discharge without punishment, on the person convicted for a first offence under the Larceny Act or the Malicious Injuries to Property Act making amends to the prosecutor, see "Compounding," *ante*, p. 169.

Search Warrant.

The right to search a person arrested for felony, with a view to securing any property believed to have been used for the purpose of the crime or likely to form

Search warrant.

(u) (1888) 21 Q. B. D. 109; 67 L. J. M. C. 67; 52 J. P. 628.

material evidence for the prosecution, has long been recognized; while this has been extended, by an Irish decision, to cases of misdemeanour (*Dillon v. O'Brien* (r), and see *ante*, p. 51). There is, however, no general right to search houses or other premises. A search warrant is an authority to an officer therein named to enter into some specified house or premises in order to search for and seize, if discovered, the particular property in respect of which it was granted; but the warrant need not specify the particular goods for which search is desired (*Jones v. German*) (x). The officer charged with the execution of the warrant should ask for admittance and state the object of his visit. If admittance be refused, he may, if he has the document in his possession, break open doors or use such other forcible measures as may be necessary under the circumstances; but a warrant should not be issued authorizing a search in the night time except, perhaps, in case of urgent necessity, or where the case is not one of mere "suspicion." A search warrant may, like a warrant for an indictable offence, be issued on a Sunday (11 & 12 Vict. c. 42, s. 4). There is no power to "back" a search warrant, but, as we have seen, if issued by a borough justice such a warrant may be executed in the surrounding county or *within seven miles* of the borough (p. 5).

P. 962.

Power to
issue at
common law.

Every magistrate has, at common law, authority to issue a search warrant in respect of stolen goods within his own jurisdiction, but it is not usually granted except upon information on oath, by the owner of the goods or some person on his behalf, to the effect that the offence of larceny has actually been committed. It has, however, been held that the information is sufficient if it can fairly be understood as alleging a suspicion and reasonable grounds for suspecting that certain of the informant's goods have been stolen (*Jones v. German*) (y).

Execution
of search
warrant.

In executing a search warrant it is advisable for the prosecutor, or some person who is well acquainted with the stolen goods, to accompany the constable during his

(v) (1887) 16 Cox, 245.

(x) [1897] 1 Q. B. 374; 66 L. J. Q. B. 281; 76 L. T. 136; 45 W. R. 278.

(y) *Supra*.

search, for the purpose of identifying the property: and the constable should be careful not to exceed the strict line of his duty; for when a constable, having a warrant to search for certain stolen property, found and took away such property, as well as other goods supposed to have been stolen, but which were not mentioned in the search warrant, nor likely to be of use in substantiating the charge of stealing mentioned in the warrant, it was held that he was liable in an action for seizing the goods. If, however, articles are found on the premises which are not mentioned in the warrant, but which are likely to furnish evidence of the identity of the articles stolen and mentioned in the warrant, the officer may be justified in seizing them (*Crozier v. Cundey*) (z).

The machinery of the search warrant has, too, been adopted in many modern statutes. Thus, by the Larceny Act, 1861, it has been provided that after proof on oath before a magistrate that there is reasonable cause to suspect that any person has in his possession, or on his premises, any property whatever on or with respect to which any offence, punishable either upon indictment or on summary conviction by virtue of that Act, has been committed, the magistrate may grant a warrant to search for such property, as in the case of stolen goods (24 & 25 Vict. c. 96, s. 103). If the property comes into the possession of the police, a court of summary jurisdiction may, on application either by a police officer or by a claimant of the property, make an order for the delivery of the property to the person appearing to be the owner; or, if the owner cannot be ascertained, make such order as may seem meet (60 & 61 Vict. c. 30, s. 1 (i.); see *ante*, p. 196).

Search
warrant
under the
Larceny Act.

And the authority to direct a search has, under the Prevention of Crimes Act, 1871, been conferred on a chief officer of police, without the intervention of a justice, where the goods are believed to be upon the premises of persons convicted of certain offences therein specified (34 & 35 Vict. c. 112, s. 16; see *post*, p. 402).

Under other
Acts.

So, too, the Children Act, 1908, authorizes magistrates to issue warrants directing a search for children supposed to have been cruelly treated, outraged, or otherwise

(z) (1827) 6 B. & C. 232.

injured (8 Edw. 7, c. 67, s. 24, and 1st Sched.; see *post*, p. 383).

Under various
Acts.

Amongst other Acts authorizing the issue of search warrants may be mentioned the Vagrant Act in cases where the vagrant is supposed to be concealed in a lodging-house (5 Geo. 4, c. 83, s. 13); the Pawnbrokers Act, 1872 (35 & 36 Vict. c. 93, s. 36); the Forgery Act, 1861 (24 & 25 Vict. c. 98, s. 46); the Coinage Act, 1861 (24 & 25 Vict. c. 99, s. 27); the Offences against the Person Act (24 & 25 Vict. c. 100, s. 65); the Gaming Act (8 & 9 Vict. c. 109, s. 3); the Betting House Act (16 & 17 Vict. c. 119, s. 11); the Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69, s. 10); the Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28, s. 12); the Army Act, 1881 (44 & 45 Vict. c. 58, s. 156 (v.)); the Public Health Act, 1875, for the seizure of unsound meat, &c. (38 & 39 Vict. c. 55, s. 119); the Licensing Act, 1874, for the seizure of illicit stores of liquor (37 & 38 Vict. c. 49, s. 17); the Act relating to dealers in "old metals" (24 & 25 Vict. c. 110, s. 4); the Salmon Fishery Act (24 & 25 Vict. c. 109, s. 24); and the Explosives Act, 1875 (38 Vict. c. 17, c. 73). See also the Bread Act, *post*, p. 342; the Musical Copyright Act, *post*, p. 747; the Obscene Publications Act, *post*, p. 569; the Petroleum Act, *post*, p. 762. And as to the metropolitan police district, see also 2 & 3 Vict. c. 47, s. 66, and 2 & 3 Vict. c. 71, s. 25.

PRISON ACT, 1898.

Payment of
part of fine,
&c., after
committal.

A prisoner, committed for non-payment of a sum adjudged to be paid under a *conviction*, who pays any part of such sum is entitled to have the term of imprisonment reduced by a number of days bearing a direct proportion to the amount so paid in part satisfaction (61 & 62 Vict. c. 41, s. 9). Such payment cannot, however, be made on Sunday, or before 9 a.m. or after 4 p.m. (Prison Rules, April 21st, 1899, r. 16). On receipt of money so paid, the clerk of the court must apply it towards payment of (a) costs, damages, or compensation ordered by the conviction to be paid to the prosecutor, (b) the fine, and (c) any other costs or charges for which

the prisoner is liable (rule of April 6th, 1899, 63 J. P. 248). These provisions apply only *after* a warrant of commitment has been made out. When part payment of a fine has been made *before* commitment it will not reduce the term of imprisonment unless it is sufficient to bring s. 5 and s. 21 (iv.) of the Summary Jurisdiction Act, 1879, into operation (*ante*, p. 112). Accordingly, where a defendant tenders money in part payment of the fine, it is generally right to direct him to retain the money and pay it to the governor of the prison. But, as it may be convenient for the clerk to the justices to accept payment of part of the fine, instructions have been given to the prisons to regard such a payment, after commitment, as made under the section. The clerk need not forward the money to the prison, but he must certify in writing on the back of the commitment the amount so paid (*Home Office Circular*, May 31st, 1904).

Pp. 1026.
1036.

Moreover, persons imprisoned for non-payment of a *civil debt*, or imprisoned without hard labour in default or in lieu of distress to satisfy a sum payable under an *order*, are treated under special rules, not placed in association with criminals, nor compelled to wear prison dress (61 & 62 Vict. c. 41, s. 6 (iii.)).

Treatment of
prisoners.
The three
divisions.

There are, too, three "divisions" of prisoners and a general power (when the sentence is *without* hard labour) to direct that the prisoner be treated as an offender of the "first" or of the "second" division (*ib.* s. 6 (ii.)); while a person imprisoned for default of finding sureties will be treated as of the "second" division, unless he is a convicted prisoner or the court directs that he be treated as of the "first" division (*ib.* s. 6 (iv.)). The direction to place a prisoner in the first or second division should be appended to the commitment and may conveniently be placed immediately above the signature of the committing magistrate (*Home Office Letter*, April 25th, 1899; 63 J. P. 280). "Justices should place in the second division any convicted person of respectable antecedents who is sentenced to imprisonment, unless the offence of which he or she is convicted is one of a specially heinous or disgraceful character"; but not if he appears unfit to associate with other prisoners of good antecedents (*Letter of Aug. 31st, 1908*). As to the infliction of corporal punishment, see *post*, p. 801; and as to the

meaning of the word "month" in a sentence, see *post*, p. 1066.

Duration of imprisonment.

A sentence of imprisonment is reckoned from the first moment of the day on which it is passed. Thus, a prisoner committed for seven days on Tuesday will be released on the following Monday; and, if the term expires on Sunday, Christmas Day, or Good Friday, he must be discharged on the preceding day.

Prisoners sentenced to more than one month's imprisonment are enabled to earn, by special industry and good conduct, a remission of one-sixth of the sentence (*Prison Rules*, 1907); but, where the prisoner is between sixteen and twenty-one years of age, the privilege of remission is now withdrawn except in the case of those who are "specially recommended" for its exercise (S. R. & O. 1909, No. 885).

Power of justice to enter and examine prison.

Prisons Act, 1877.

Under the Prisons Act, 1877, *any justice* having jurisdiction in the place in which a prison is situate, *or* having jurisdiction in the place where the offence in respect of which any prisoner may be confined in prison was committed, may, when he thinks fit, *enter into and examine the condition of such prison and of the prisoners therein*; and he may enter any observations he may think fit to make in reference to the condition of the prison or abuses therein in the visiting book to be kept by the gaoler. But he is not, as such justice, entitled to visit any prisoner under sentence of death, nor to communicate with a prisoner except in respect of his treatment or as to some complaint (40 & 41 Vict. c. 21, s. 15).

CHAPTER VI.

OFFENCES PUNISHABLE ON INDICTMENT.

OFFENCES PUNISHABLE SUMMARILY.

MATTERS OF COMPLAINT.

NOTA BENE.

IN the following pages it must be taken, *unless the contrary is expressly stated*, that

- (a) **Indictable offences** are triable at quarter sessions ; that bail is *discretionary* ; and that justices have *no power to deal summarily* with the case unless the accused is between seven and sixteen years of age, and not then even, if the charge is one of homicide ;
- (β) **Offences triable summarily** must be tried before *at least two justices* or a stipendiary magistrate, &c. ; and that *no appeal* lies to quarter sessions unless the defendant is ordered to be imprisoned *without the option of a fine*.

As to the power of justices, (i.) to direct imprisonment *without distress* on non-payment of a penalty, see *ante*, p. 110 ; (ii.) to allow payment *by instalments*, see *ante*, p. 112 ; (iii.) to discharge the accused *without punishment*, see *ante*, p. 101 ; (iv.) to *mitigate* penalties, or to impose a *fine instead of imprisonment*, see *ante*, pp. 105, 106 ; and (v.) to award *costs*, see *ante*, p. 115.

As to the punishment of *indictable* offences tried *summarily*, see *ante*, p. 140.

As to the punishment of *children*, see *ante*, pp. 107, 142.

UNAPPROPRIATED PENALTIES are payable to the treasurer of the county or quarter-sessions borough, as the case may be (*cf. ante*, p. 193). And in a *quarter-sessions borough*, unless the Act (α) directs payment to the informer or person aggrieved, or (β) relates to the customs, excise, post-office, the revenue of the Crown, or to trade or navigation, even APPROPRIATED penalties will go to the borough treasurer except under an Act subsequent to 1835 which directs that the penalty "shall go in any other manner *and not to the borough fund*" (45 & 46 Vict. c. 50, s. 221).

ABDUCTION OF WOMEN AND GIRLS.

The following offences relate to the abduction of women and girls. Magistrates cannot in any instance deal summarily with adults charged with any of these offences, and none of them is triable at quarter sessions. The husband or wife of the defendant may be called as a witness either for the *prosecution* or defence *and without the defendant's consent* (*ante*, p. 174):—

Procedure.

Evidence of husband or wife.

- (a) Where any woman of any age has an interest, absolute or contingent, in any property whatsoever, or is a presumptive heiress or next of kin to a person having such interest, every one commits felony:—
- (i.) Who, *from motives of lucre*, takes away or detains her *against her will*, with intent to marry or carnally know her, or to cause her to be married or carnally known by another; or
- (ii.) Who (if such woman be under twenty-one) *fraudulently* allures, takes away, or detains her *out of the possession and against the will of her father and mother*, or other person in lawful charge of her, with intent to marry or carnally know her, or to cause her to be married or carnally known by another. [Penal servitude for fourteen years.] (24 & 25 Vict. c. 100, s. 53.)
- (b) Every one commits felony who *by force* takes away, or detains against her will, any woman of any age, with intent to marry or carnally know her, or to cause her to be married or carnally known by another. [Penal servitude for fourteen years.] (24 & 25 Vict. c. 100, s. 54.)
- (c) Every one is guilty of a misdemeanour who unlawfully takes or causes to be taken any unmarried girl *under sixteen years of age* out of the possession and against the will of her father or mother, or of any other person in lawful charge of her. [Imprisonment for two years.] (24 & 25 Vict. c. 100, s. 55.)

Abduction of heiress with intent to marry or carnally know her, &c.

(i.) of any age from motives of lucre and against her will,

(ii.) if under 21 and by fraud.

Forcible abduction of woman of any age.

Abduction of girl under 16.

If the girl appears to the court to be under sixteen she must be deemed to be under that age *unless the contrary is proved* (8 Edw. 7, c. 67, "Children Act, 1906," s. 123 (ii.)). And the general procedure

of the last cited Act is applicable (see *post*, p. 379 to p. 384).

It will be no defence for the accused to prove that he was told, and had good reason to believe, that the girl was in fact above sixteen years of age (*R. v. Prince*) (a).

An offence is not committed where the girl leaves home *without any persuasion, inducement, or blandishment*, and afterwards joins the defendant. That does not amount to a "taking." Indeed, if the suggestion to go away comes wholly from the girl and the man plays a purely passive part, the case would not seem to be within the section at all (*R. v. Jarvis*) (b). But it is otherwise where a girl leaves home in consequence of inducements held out by a man and remains away with him, although, at the particular moment when she leaves, he may have ceased to wish her to do so (per *Bramwell, B.*, in *R. v. Olifier*) (c).

Abduction of girl under 18 with intent that she should be carnally known.

- (d) Every one is guilty of a misdemeanour who takes or causes to be taken any unmarried girl under the age of eighteen years out of the possession and against the will of her father or mother, or any other person having the lawful charge of her, *with intent that she should be unlawfully and carnally known* by any man, whether such carnal knowledge is intended to be with any particular man, or generally. [Imprisonment for two years.] (48 & 49 Vict. c. 69, s. 7.)

Proof of age.

The *age* of the girl may be proved by a certified extract from the register of births, *i.e.*, by a copy under the hand of the registering officer, or by a copy duly certified by the superintendent registrar of the entry in the book transmitted to him, or by a duly certified copy, stamped with the seal of the general registry office, of the entry in the copy register books. There must, too, be evidence to establish the identity of the person named therein

(a) (1876) L. R. 2 C. C. R. 154; 45 L. J. M. C. 122; 13 Cox, 138; 39 J. P. 676.

(b) (1903) 20 Cox, 249.

(c) (1866) 10 Cox, 402.

with the girl in question. Or the date of birth might be proved by the evidence of the girl's mother, or of some other person present at the birth. If the girl were under sixteen, proceedings would probably be taken for offence (c).

Abduction of girl under eighteen—*cont.*

It is a sufficient defence to any charge *under this section* if it is made to appear to the court or jury that the accused had reasonable cause to believe that the girl was of or above the age of eighteen years; and the jury were directed to consider a statement to this effect made by the girl just *after* the pair had set off together, although the accused had not before that time made an inquiry as to the girl's age (*R. v. Packer*) (d).

Defence.

It has been decided that the defendant must have held out to the girl some *threat, blandishment or inducement*, in order to constitute a "taking" and bring him within this section (*R. v. Henkers*) (e).

Where a girl left her master's employment to visit her father for two days, and, on the evening of the first day of the visit, left her father's house with the defendant, it was held that the girl was under the lawful charge of her master, and not of her father (*R. v. Miller*) (f).

As to the taking away of children *under fourteen* by force or fraud, see "Children," *post*, p. 367.

As to the detention of women in brothels, or on other premises, with intent that they may be carnally known, see "Brothels," *post*, p. 347.

ABOMINABLE CRIMES.

Every one who commits the abominable crime of buggery, either with mankind or with any animal, is guilty of felony punishable with penal servitude for life or any less punishment; and every one who attempts to commit such a crime, or is guilty of an assault with intent to commit the same, is guilty of a misdemeanour punishable, as a maximum punishment, with penal servitude

Abominable crimes.

(d) (1886) 16 Cox, 57.

(e) (1886) 16 Cox, 257; cf. (c), *supra*.

(f) (1876) 13 Cox, 179.

for ten years (24 & 25 Vict. c. 100, ss. 61, 62; 54 & 55 Vict. c. 69).

Boys under *fourteen* years of age, and girls under *twelve* years of age, are deemed incapable of committing these offences. But if the crime be committed *on* a boy under fourteen, the *agent* is, of course, guilty of felony or misdemeanour as the case may be. These offences are not in any case punishable on summary conviction, unless the accused be under sixteen years of age; and the *felony* is not triable at quarter sessions.

In case of an "attempt" or "assault with intent" on a juvenile under sixteen, the *procedure* of the Children Act, 1908, will apply (*post*, p. 379 to p. 384).

As to *indecent assault on a male*, see "Assault," p. 287.

ABORTION.

The following offences relate to the procuring of abortion, and (so far as adults are concerned) are not triable summarily:—

Attempt by
pregnant
woman to
procure
abortion.

- (a) Any woman, *being with child*, who, with intent to procure her own miscarriage, unlawfully administers to herself any poison or other noxious thing, or who, with the like intent, unlawfully uses any instrument or other means whatsoever, is guilty of felony. [Penal servitude for life.] (24 & 25 Vict. c. 100, s. 58.)

This offence is triable only at assizes.

It need not be shown that the thing administered would *necessarily* be noxious, howsoever and in whatsoever quantity administered; it is sufficient if it is noxious *as in fact administered* (*R. v. Cramp*) (g).

A woman who takes a harmless drug under the belief that it is "noxious," may, it is said, be guilty of an "attempt" (*R. v. Brown*) (h). But if the person who supplied the drug to her did not himself believe that it could operate to

(g) (1880) 5 Q. B. D. 307; 49 L. J. M. C. 44; 42 L. T. 442; 44 J. P. 411; 28 W. R. 709.

(h) (1899) 63 J. P. 790.

procure abortion, he could not, it seems, be convicted of *inciting* her to commit the "attempt" (S.C.).

- (b) Any person who, with intent to procure the miscarriage of any woman (*whether with child or not*), unlawfully administers to or causes to be taken by her, any poison or other noxious thing, or who, with the like intent, unlawfully uses any instrument or other means whatsoever, is guilty of felony. [Penal servitude for life.] (24 & 25 Vict. c. 100, s. 58.)

Unlawful acts with intent to procure abortion.

This offence is triable only at assizes.

If a woman believes *herself* to be, but is not in fact, with child, she cannot be convicted of attempting to procure abortion. If, however, she conspires with others to use means to procure abortion, she may, it seems, be convicted of *conspiracy* to procure abortion (*R. v. Whitchurch and Cross*) (i). So she may be convicted of "aiding and abetting" a man to use an instrument upon herself (*R. v. Sockett*) (ii). Cf. also *R. v. Duquid*, cited *post*, p. 368.

Where a *defence* was set up that the instruments were used for the lawful purpose of examining the girl, who was alleged to be suffering from leucorrhœa, evidence of the use by the accused of similar instruments for similar improper purposes on previous occasions was held, by a majority of the court, to have been rightly admitted (*R. v. Bond* (j); and cf. *R. v. Dale*) (k).

- (c) Any person who unlawfully supplies or procures a poison or other noxious thing, or any instrument or thing whatsoever, *knowing* that it is intended to procure the miscarriage of a woman (even though she be not, in fact, with child), is guilty of a misdemeanour. [Penal servitude for five years.] (24 & 25 Vict. c. 100, s. 59.)

Supplying or procuring noxious thing or instrument.

This offence is triable at quarter sessions.

(i) (1890) 24 Q. B. D. 420; 59 L. J. M. C. 77; 62 L. T. 124; 54 J. P. 472; 38 W. R. 336.

(ii) (1908) 72 J. P. 428.

(j) [1906] 2 K. B. 389; 75 L. J. K. B. 693; 95 L. T. 296; 54 W. R. 586; 70 J. P. 424; 22 T. L. R. 633.

(k) (1889) 16 Cox, 703.

The word "knowing" in this section seems to have been construed as equivalent to "believing"; cf. *R. v. Hillman (kk)*, where it was held that, if a noxious thing be supplied with intent to procure miscarriage, it matters not that the woman herself had no intention of using it, as, *e.g.*, where a police trap is set to catch an abortionist.

And see "Drugging," *post*, p. 426.

ACCUSATIONS OF CRIME.

It is a felony, punishable on indictment with penal servitude for life, and (if the accused is a male under sixteen) whipping, to:—

Sending
letters
accusing of
crime.

(a) *Send or cause to be received*, knowing the contents thereof, *any letter or writing* accusing or threatening to accuse any other person of any crime punishable by death or penal servitude for not less than seven years, or of any assault with intent (or attempt) to commit a rape, or of any infamous crime, *with intent to extort or gain any property, money, or valuable thing*. "Infamous crime" is defined to mean buggery with mankind or a beast, and every assault with intent to commit such a crime, and every attempt or solicitation to be guilty of such a crime (24 & 25 Vict. c. 96, s. 46).

Accusation of
crime.

(b) *Accuse or threaten to accuse* any person (whether the one to whom the accusation is made or any other) of any such crime as before mentioned *with the view of extorting or gaining from such person or from any other person any property, money, or valuable thing* (24 & 25 Vict. c. 96, s. 47).

Neither of these offences is, in case of an adult, triable except at assizes.

It is a similar offence to compel persons to *execute deeds*, &c., under threat of violence or of accusation, see 24 & 25 Vict. c. 96, ss. 48, 49; and as to demanding property by *menaces*, see title LARCENY, *post*, p. 666.

See also "Threatening Letters," *post*, p. 904.

(kk) (1863) L. & C. 343; 33 L. J. M. C. 60; 9 Cox, 386.

ADULTERATION OF FOOD AND DRUGS.

SALE OF FOOD AND DRUGS ACTS, 1875, 1879, AND 1899.

38 & 39 Vict. c. 63 ; 42 & 43 Vict. c. 30 ; 62 & 63 Vict. c. 51.

These Acts contain special elaborate provisions as to the course to be adopted by a purchaser where the purchase is made *with the intention of submitting the article to analysis*. But the Acts are not confined in their operation to such purchases : they extend, *e.g.*, to a case where there is a contract for delivery which may cover a considerable period of time, and to the class of cases in which provisions are purchased from time to time in small bulk without any suspicion at the time of purchase that deceit is being practised by the seller, or that the goods are otherwise than pure and unadulterated. In such cases as these, it is not necessary for the purchaser to obtain the certificate of a public analyst ; the offence may be proved by any satisfactory evidence (*Buckler v. Wilson*) (1).

Operation of the Acts.

Private purchases.

Any purchaser of an article of food or a drug is, however, entitled to have the same *analysed* by the *public analyst* for the place where the sale takes place on payment of a fee not exceeding half a guinea. If there be no such public analyst then acting for the place, the analysis may be made by some other public analyst for such fee as may be agreed upon (38 & 39 Vict. c. 63, s. 12). Moreover, any *medical officer of health, inspector of nuisances* or inspector of weights and measures, or any inspector of a market, or constable, under the direction and at the cost of the authority appointing such officer, &c., or charged with the execution of the Acts, may *insist* upon being supplied *for the purpose of analysis* with a *sample* of any food or drug *exposed to sale, or on sale by retail* on any premises, or in any shop or stores, or in any street or open place of public resort (38 & 39 Vict. c. 63, ss. 13, 17 ; 42 & 43 Vict. c. 30, s. 5 ; cf. (1), *post*, p. 234).

Obtaining samples for analysis.

It is not necessary that a special direction by the local authority, directing the action of the public officer, should be given in each particular case where it is desired

(1) [1896] 1 Q. B. 83 ; 65 L. J. M. C. 18 ; 60 J. P. 118 ; 73 L. T. 580 ; 44 W. R. 220.

Obtaining
samples for
analysis
—*contd.*

to secure a sample; the only difference, under ss. 12, 13, 14 of the Act of 1875 (after a purchase for *test* purposes), between proceedings by an ordinary purchaser and those by an officer or inspector being in respect of the incidence of the cost of the analysis. It is, therefore, unnecessary to prove, in proceedings before justices for alleged adulteration, that the officer was in fact acting by direction of the local authority (cf. *Hale v. Cole*) (*m*). This would not, however, be the case in proceedings under the Acts of 1879 and 1899, dealing with the obtaining of samples of articles at the place of delivery, under which the prosecution *must* be undertaken by a public officer (see *post*, pp. 235—237).

Government
Department
may act in
default of
local
authority.

If the local authority fail to enforce the provisions of the Acts in relation to any article of food, the Local Government Board or the Board of Agriculture and Fisheries, may, by order, empower an officer of the Board to enforce such provisions (62 & 63 Vict. c. 51, s. 3) (*mm*).

As to the taking by a medical officer, inspector, &c., of samples of articles *in course of delivery*, see *post*, pp. 235, 237.

Necessity to
notify inten-
tion of causing
an analysis
where pur-
chase is for
test purposes.

The purchaser of the article of food or drug, whether a public officer or not (*Parsons v. Birmingham Dairy Co.*) (*n*), if he purchase *with the intention of submitting the same to analysis*, must forthwith *notify* to the seller, or his agent selling the article, an intention to have the same analysed by the public analyst, and must *divide* his purchase into *three* parts to be then and there separated, marked, and sealed or fastened up. The purchaser must retain one part for future comparison and production at the trial, another for submission to the analyst, and the third, *if required to do so*, he must deliver to the seller or his agent (38 & 39 Vict. c. 63, ss. 14, 21; 62 & 63 Vict. c. 51, s. 13). These requirements are peremptory, except, of course, in the case of a private purchaser purchasing for consumption and not for test purposes; and, where the purchase is for the purpose of submitting the article to analysis, even if the seller were to admit the offence at the time, notice to him that it is intended to have an analysis made is essential to a conviction

(*m*) (1891) 55 J. P. 377.

(*mm*) Cf. *Falconer v. Whyte*, [1908] S. C. (J.) 40.

(*n*) (1882) 9 Q. B. D. 172; 51 L. J. M. C. 111; 46 J. P. 727.

(*Smart & Son v. Watts*) (o). We have seen that the notification must be made *forthwith*—but, where a purchase of gin had been made by a constable at the instance of an inspector, and, two minutes after the constable had left the shop, the constable returned with the inspector and the notification of intention to procure an analysis was then made to the vendor, the notification was held to have been made “*forthwith*” (*Somerset v. Miller*) (p); see *Stace v. Smith*) (q). The notification should follow exactly the words of the statute, but slight deviations therefrom are not material, *e.g.*, “county” analyst instead of “public” analyst (*Wheeker v. Webb*) (r). In one case an inspector gave his servant some money and sent him to a public-house to buy a bottle of spirits. After the servant had been in the house a minute and had paid for the bottle, the inspector entered, gave the required notification, and was subsequently held to be a purchaser within the Acts (*Garforth v. Esam*) (s).

Notification of intended analysis—*contd.*

As to the *division* of the article, it may be noted that, where the purchase consisted of four penny packets of cream of tartar, all bearing similar labels, it was held sufficient to mix the contents of the packets together and then divide into three parts (*Smith v. Savage*) (t). But, where the purchase consisted of six twopenny bottles of camphorated oil, it was held insufficient to divide them into three lots of two bottles each without any mixing of the contents (*Mason v. Cowdary*) (u). Each of the three parts must, of course, be sufficient in quantity to afford reasonable facilities for the purpose of analysis (*Lowery v. Hallard*) (x).

Division for purpose of analysis.

Where the “general interests” of the “consumer” or of “agriculture” demand it, the Local Government Board or

Local Government Board or Board of Agriculture may sample articles of food.

(o) [1895] 1 Q. B. 219; 71 L. T. 768; 43 W. R. 379; 64 L. J. M. C. 89; 59 J. P. 54.

(p) (1890) 54 J. P. 614.

(q) (1881) 45 J. P. 141.

(r) (1887) 51 J. P. 661.

(s) (1892) 56 J. P. 521; 8 T. L. R. 243.

(t) [1905] 2 K. B. 88; 74 L. J. K. B. 576; 92 L. T. 775; 53 W. R. 477; 69 J. P. 245.

(u) [1900] 2 Q. B. 419; 69 L. J. Q. B. 667; 82 L. T. 802; 64 J. P. 662; 49 W. R. 28.

(x) [1906] 1 K. B. 398; 75 L. J. K. B. 249; 93 L. T. 844; 54 W. R. 520; 70 J. P. 57; 22 T. L. R. 186; 4 G. L. R. 189.

Board of Agriculture may direct an officer of the Board to procure for analysis samples of any article of food. Such officer must, however, divide the sample into *four* parts and send the fourth part to the Board (62 & 63 Vict. c. 51, s. 2).

Certificate of
public
analyst.

If the purchase has been made *for the purpose of analysis*, and notification duly given, the sample must be sent to the analyst, and “when the analyst having analysed any article shall have given his certificate of the result, from which it may appear that an offence against some one of the provisions of this Act has been committed, *the person causing the analysis to be made* may take proceedings for the recovery of the penalty herein imposed for such offence before any justices in petty sessions having jurisdiction in the place where the article or drug sold was actually delivered to the purchaser.” And it must be remembered that, if the purchase has been made for test purposes or with a view of submitting the article to analysis, no proceeding can be taken until this certificate, in the prescribed form, has been obtained (38 & 39 Vict. c. 63, s. 20).

Proceedings
by person
“causing the
analysis to be
made.”

Form of
certificate.

“The certificate,” said *Alverstone*, C.J., “must be a document in proper form, and ought to contain in it sufficient materials to enable the magistrates to form a judgment whether the offence charged has been committed” (*Lee v. Bent*; *Barlow v. Noblett, &c.*) (*y*). In these cases the proceedings were taken under s. 6 of the Act of 1875 (*post*, p. 222), and the certificates merely stated that certain beer “contained a serious quantity of arsenic.” The certificate should, indeed, follow, so far as is possible, the form given in the schedule to the Act of 1875, which (*inter alia*) requires the analyst, in the case of an article liable to decomposition, to report whether any change has taken place that would interfere with the analysis. The omission of such a report would appear to be fatal—at any rate fatal to a conviction based on the certificate alone (cf. *Hudson v. Bridge*) (*z*). The form also provides for a statement of the weight

(*y*) [1901] 2 K. B. 290; 70 L. J. K. B. 747; 84 L. T. 719; 65 J. P. 646; 49 W. R. 684.

(*z*) (1903) 19 T. L. R. 369; 88 L. T. 550; 20 Cox, 425; 67 J. P. 186; 1 L. G. R. 400.

of the sample if it can be conveniently weighed, but it has been held that the weight need not be stated unless it is material to the accuracy of the analysis (*Sneath v. Taylor*) (a). Form of
certificate
—*contd.*

In one case the certificate declared the result of the analysis to be as follows: "I find that the sample contained an excess of water over and above what is allowed by Act of Parliament. I estimate the excess of water at 13 per cent. of the entire sample. I am of opinion that the sample is not a sample of genuine rum." It was held that, having regard to s. 6 of the Act of 1879 (*post*, p. 222), the certificate ought to have stated the proportion of water mixed with the rum, and was insufficient, and that a conviction could not be supported (*Newby v. Sims*) (b). But, where the certificate alleged of a sample of brandy that it had "been reduced from 25 degrees under proof to 27·6 degrees under proof," such certificate was held sufficient, as it showed how far the sample fell below the standard recognized by s. 6 of the Act of 1879 (*Findley v. Haas*) (c). Where the certificate merely stated that a sample of milk "contained the percentage of foreign ingredients as under: 5 per cent. of added water," it was held to be bad because it did not state the constituent parts of the sample analysed; and, *water being present in all milk*, though in varying proportions, it was therefore impossible for the court to determine what standard of quality the analyst had adopted (*Fortune v. Hanson*) (d). But the certificate would, of course, have been sufficient if it had further disclosed the scientific basis on which the conclusion of the analyst as to the addition of water rested: *e.g.*, thus—"This opinion is based on the fact that the sample contained 7·97 per cent. solids not fat, whereas genuine milk contains not less than 8·5 per cent. solids not fat" (*Bridge v. Howard*) (e). And see *Bayley v. Cook* (f), where it was

(a) [1901] 2 K. B. 376; 70 L. J. K. B. 872; 49 W. R. 719; 65 J. P. 548.

(b) [1894] 1 Q. B. 478; 63 L. J. M. C. 228; 58 J. P. 263.

(c) (1903) 19 T. L. R. 353; 88 L. T. 465; 67 J. P. 198.

(d) [1896] 1 Q. B. 202; 74 L. T. 145; 44 W. R. 431; 60 J. P. 88; 65 L. J. M. C. 71.

(e) [1897] 1 Q. B. 80; 65 L. J. M. C. 229; 75 L. T. 300; 54 W. R. 78; 60 J. P. 790.

(f) (1905) 21 T. L. R. 235; 92 L. T. 170; 69 J. P. 139; 53 W. R. 410.

Form of
certificate
—*contd.*

held that, on an allegation of deficiency of milk-fat, a failure to state in terms the standard of milk-fat adopted for genuine milk would not vitiate the certificate, as a simple calculation from the figures given on the face of the certificate would show that the analyst had proceeded upon the standard laid down by the Sale of Milk Regulations, 1901 (*vide infra*).

Where the case is *not* one of *adulteration* (e.g., where the charge is *abstraction*), the certificate need not set out the parts contained in the sample, but only the “result” of the analysis. The “observations” which follow the “result” in the form of certificate given in the schedule to the Act are only to be made in case of adulteration (*Bakewell v. Daris*) (*g*). If the analyst reports extraneous facts unconnected with his analysis, the certificate is inadmissible as evidence of such facts (*R. v. Smith*) (*h*).

Regulations as
to analysis of
milk, cream,
butter, or
cheese.

The Board of Agriculture may make regulations for determining what deficiency in any of the normal constituents of genuine *milk, cream, butter, or cheese*, or what addition of extraneous matter or proportion of water, in any sample of milk (including condensed milk), cream, butter, or cheese shall raise a presumption, *until the contrary is proved*, that the article is not genuine or is injurious to health (62 & 63 Vict. c. 51, s. 4). The power extends to making regulations as to the proportion of any milk-solid other than milk-fat in a sample of butter or milk-blended butter (7 Edw. 7, c. 21, s. 6).

Under regulations made in 1901, it is to be presumed, *until the contrary is proved*, that, if a sample of MILK (not being milk sold as skimmed, or separated, or condensed milk)—

Milk
standard.

- (a) Contains *less than 3 per cent. of milk-fat*, the milk is not genuine by reason of the *abstraction* therefrom of milk-fat, or the *addition* thereto of *water*;
- (β) Contains *less than 8·5 per cent. of milk-solids* other than milk-fat, the milk is not genuine by reason of the *abstraction* therefrom of milk-solids other than milk-fat, or the *addition* thereto of *water*.

(*g*) [1894] 1 Q. B. 296; 63 L. J. M. C. 93; 69 L. T. 832; 58 J. P. 228; 10 T. L. R. 40.

(*h*) [1896] 1 Q. B. at p. 603; 65 L. J. M. C. 104; 60 J. P. 372.

Similarly, if a sample of SKIMMED OR SEPARATED MILK (not being condensed milk) contains *less than 9 per cent. of milk-solids*, it is presumed that the milk is not genuine by reason of the *abstraction* of milk-solids other than milk-fat, or the *addition* thereto of water. Milk
standard
—*contd.*

And by regulations made in 1902, if the proportion of water in a sample of BUTTER exceeds 16 per cent., it is presumed not to be genuine, until the contrary is proved (and see now 7 Edw. 7, c. 21, *post*, pp. 239, 704).

In one case, milk sold fell below the standard (containing 2·81 per cent. of milk-fat against 3 per cent.), but it had not in fact been tampered with. The deficiency was accounted for by the length of the interval between successive milkings. It was held to be a question of *fact* whether the article was such as was asked for and that justices were not bound, in law, to convict (*Wolfenden v. McCulloch*) (*i*). But, in an earlier case, where the purchaser asked for *new* milk, and was supplied with genuine milk deficient in fat owing to the cow not having been milked for sixteen hours, a majority of the court held that, by reason of the abnormal manner in which the cow had been treated, there was evidence on which justices might convict (*Smithies v. Bridge*) (*k*). As to the meaning of "butter" or "cheese" see *post*, pp. 697, 698.

The name of the prosecutor (*i.e.*, speaking generally, the informant or the person on whose behalf the information was laid) must be stated on the summons, which must also contain *particulars* of the offence or matter charged, and there must be served *with the summons* a copy of any *analyst's certificate* obtained on behalf of the prosecutor: it must not be made returnable in less time than *fourteen days* from the day on which it is served (62 & 63 Vict. c. 51, s. 19). This means fourteen *clear days*, so that a summons served on November 26th and returnable on December 10th, was held not to be properly served (*McQueen v. Jackson*) (*l*); and see *Batt v. Mattinson*) (*m*). It has been held that, where samples were taken from separate cans of milk under the Act of 1879 The summons.

(*i*) (1905) 92 L. T. 857; 21 T. L. R. 411; 69 J. P. 228.

(*k*) [1902] 2 K. B. 13; 87 L. T. 167; 66 J. P. 740.

(*l*) [1903] 2 K. B. 163; 88 L. T. 871; 72 L. J. K. B. 606; 67 J. P. 353; 1 L. G. R. 601; 20 Cox, 499.

(*m*) *Ante*, p. 70.

The summons (*post*, p. 235), the officer might lay separate informations for "abstraction" (*post*, p. 232) in respect of each sample, although by the terms of the contract between the defendant and his purchaser the milk contained in the several cans was to be taken for one day's supply (*Fecitt v. Walsh*)(*n*). But it has recently been held, in Scotland, that, where samples (found to be deficient in quality) had been taken from fourteen out of sixteen cans in course of delivery in one consignment, it was incompetent to charge and convict for more than one offence under s. 6, as there had been only one delivery (*Telford v. Fyfe*) (*nn*).

In one case the court decided that no conviction could take place where the summons alleged that the article sold was not of the nature, substance, and quality of the article demanded, but did *not give particulars* of the adulteration (*Barnes v. Rider*) (*o*). It was afterwards held, however, that the omission of the particulars of the offence did not deprive the justices of jurisdiction, though, if they were satisfied that the defendant was prejudiced by the omission, he was entitled to an adjournment of the hearing (*Neal v. Devenish*) (*p*). The difficulty as to particulars now rarely arises, as a copy of the analyst's certificate is required to be served with the summons; but it must be remembered that an omission to comply with this requirement could not be cured by an adjournment (*Batt v. Mattinson*) (*q*).

Time for
laying infor-
mation.

When any article of food or drug has been *purchased for test purposes*, no prosecution *in respect of the sale* can be *instituted* after the expiration of *twenty-eight days* from the time of the purchase (62 & 63 Vict. c. 51, s. 19 (i)).

The prosecution is *instituted* when the *information* is laid, and, though the information must be laid within the twenty-eight days, the *summons* need not necessarily issue within that period. Thus, in one case, an information was laid within the twenty-eight days, *i.e.*, on January 23rd, and a summons issued and made returnable

(*n*) [1891] 2 Q. B. 304; 60 L. J. M. C. 143; 65 L. T. 82; 55 J. P. 726; 39 W. R. 525.

(*nn*) [1908] S. C. (J.) 83.

(*o*) (1892) 62 L. J. M. C. 25; 68 L. T. 147; 57 J. P. 473.

(*p*) [1894] 1 Q. B. 544; 63 L. J. M. C. 78; 70 L. T. 628; 58 J. P. 246.

(*q*) *Ante*, p. 70.

February 11th; but the summons was not *served* until January 29th, *i.e.*, less than fourteen days from the return day. Accordingly, the case was not proceeded with, but on the original return day, after the expiration of the twenty-eight days, a fresh summons was issued by the same justice returnable on March 3rd. It was held that the proceedings were in order (*Brooks v. Bagshaw*) (r).

Time for
laying the
information
—*contd.*

In *Dixon v. Wells* (s) the information was laid within the twenty-eight days, but the summons was signed by a justice who had not heard the application on the laying of the information. The defendant appeared and objected to the jurisdiction. The objection was overruled, but, as the court held, improperly overruled, inasmuch as the summons was illegally issued by the justice who signed it and was, in fact, no summons at all. Moreover, as the defendant objected to the case proceeding, there was no waiver of any irregularity; and, even if there had been such a waiver by appearance, the justices would have had no jurisdiction, seeing that the summons, if it were treated as issued on the day of hearing, would not have been issued within the twenty-eight days *formerly* prescribed for service of the summons (s). Prior to the Act of 1899, it was necessary to *serve the summons* within the twenty-eight days. It is, however, to be observed that the twenty-eight days' limit only applies when the article has been purchased from the defendant *for test purposes*. As to the time limit in cases of *false warranty*, see *post*, p. 234.

In proceedings *by the person causing the analysis to be made* (*ante*, p. 214), the certificate of the analyst is *prima facie* sufficient, though not conclusive, evidence of the facts therein stated, provided it is in proper form. The certificate must, therefore, be acted upon unless and until it is displaced by evidence to the contrary (*Elder v. Dryden*) (ss); but the defendant is entitled, if he thinks fit, to require the personal attendance of the analyst to depose as to the facts alleged in the certificate (38 & 39 Vict. c. 63, s. 21). The production by the

Evidence.

(r) [1904] 2 K. B. 798; 73 L. J. K. B. 839; 91 L. T. 535; 53 W. R. 13; 20 T. L. R. 655; 68 J. P. 514.

(s) (1890) 25 Q. B. D. 249; 59 L. J. M. C. 116; 62 L. T. 812; 54 J. P. 725.

(ss) (1908) 99 L. T. 20; 72 J. P. 355; 6 L. G. R. 786.

Evidence
—*contd.*

defendant of a certificate of a public analyst in the prescribed form is now *prima facie* sufficient evidence of the facts therein stated, unless the prosecutor requires the analyst to be called: a copy of such certificate must be sent to the prosecutor at least *three clear days* before the return day, otherwise the court may adjourn the hearing on such terms as may seem proper (62 & 63 Vict. c. 51, s. 22). But evidence may be given to contradict the statement of facts contained in a certificate, although it may not have been required that the analyst should attend to give evidence in support of his certificate (*Hewitt v. Taylor*) (*t*); and justices may, it seems, act on their own knowledge of the properties of the article alleged to be adulterated (*R. v. Field*) (*u*); *Shortt v. Robinson*) (*x*). Indeed, in the case last cited, justices seem to have been allowed to read and act upon a report of certain officials of Somerset House which they themselves had rightly rejected as evidence. Magistrates have power in cases of difficulty to send articles to the Government laboratory to be analysed by the chemical officers of the Inland Revenue Department; and they *must* take this course if either party request them to do so (38 & 39 Vict. c. 63, s. 22; 62 & 63 Vict. c. 51, s. 21). The sample sent to the Government laboratory need not necessarily be the third part or sample retained by the purchaser, so that the mere fact of such third part or sample having become unfit for analysis will not defeat the prosecution, provided, of course, that this third part or sample had been properly taken and fastened up as required by the statute (*Suckling v. Parker*) (*y*). APPEAL lies to the quarter sessions (38 & 39 Vict. c. 63, s. 23). The application of penalties is also provided for (*ib.* s. 26); in case of proceedings by an officer of the authority appointing (or agreeing to the acting of) an analyst, the fine goes to such authority, otherwise there is no special appropriation (cf. *ante*, p. 204).

Analysis at
Government
laboratory.

Appeal.
Penalties.

(*t*) [1896] 1 Q. B. 287; 65 L. J. M. C. 68; 60 J. P. 311; 74 L. T. 51.

(*u*) (1895) 64 L. J. M. C. 158; 11 T. L. R. 240.

(*x*) (1898) 68 L. J. Q. B. 352; 80 L. T. 261; 63 J. P. 295; 19 Cox, 243.

(*y*) [1906] 1 K. B. 527; 75 L. J. K. B. 302; 94 L. T. 552; 54 W. R. 438; 70 J. P. 209; 4 L. G. R. 531; 21 Cox, 145.

OFFENCES.

Everyone, who commits any of the offences (a), (b), (c), (d), (e), or (f), next hereinafter specified, becomes liable to a

PENALTY.—FINE not exceeding 50*l.*, and, in default of distress, imprisonment, *without* hard labour, according to scale (p. 111).

A *second* or subsequent offence is an *indictable* misdemeanour punishable by imprisonment, with hard labour, for not more than six months.

PENALTY in respect of offences (a), (b), (c), (d), (e), or (f).

(a) *Mixes, colours, stains, or powders* any article of food with any ingredient or material, so as to render the article *injurious to health*, with intent that the same may be sold in that state.

Offences as to mixing, colouring, &c., an article of food.

(b) *Orders or permits* any other person so to mix, colour, stain, or powder with the like intent.

(a), (b), (c).

(c) *Sells* any such article so mixed, coloured, stained, or powdered, unless he can satisfy the court that he did not know and could not with reasonable diligence have known that the article was so mixed, coloured, stained or powdered (38 & 39 Vict. c. 63, ss. 3, 5).

It is not sufficient to justify a conviction that the *added ingredient* is *in itself* injurious to health. It must appear that the *food* is rendered injurious to health by reason of the *admixture* (*Hull v. Horsnell*) (z). The analyst's certificate need not state that the food was rendered injurious to health (*ib.*). A conviction was supported where cream had been mixed with boron to retard sourness, as stated on the label (*Cullen v. McNair*) (zz).

The word "food" includes every article used for food or drink by man, except drugs and water. It includes, moreover, any article which ordinarily enters into or is used in the composition or preparation of human food, and also flavouring matters and condiments (62 & 63 Vict. c. 51, s. 26).

Meaning of food.

(d) *Mixes, colours, stains, or powders* any drug with any ingredient or material, so as to affect *injuriously* the quality or potency of the drug, with intent that the same may be sold in that state.

Offences as to mixing, colouring, &c., a drug (d), (e), (f).

(z) (1904) 92 L. T. 81; 21 T. L. R. 32; 68 J. P. 591.

(zz) (1908) 99 L. T. 358; 6 L. G. R. 753; 24 T. L. R. 692; 72 J. P. 376.

- (e) *Orders or permits* any other person so to mix, colour, stain, or powder with the like intent.
- (f) *Sells* any such drug so mixed, coloured, stained or powdered, unless he can satisfy the court that he did not know and could not with reasonable diligence have known that the drug was so mixed, coloured, stained, or powdered (38 & 39 Vict. c. 63, ss. 4, 5).

Meaning of
"drug."

The word "drug" includes medicine for external as well as internal use (s. 2). Beeswax sold by a grocer *for non-medicinal purposes* has been held not to be a drug, although beeswax may be used in the preparation of medicines, and appears in the British Pharmacopœia. The sample was adulterated with fifty parts of paraffin (*Fowle v. Fowle*) (a). It is not an offence under s. 4 if the mixing, &c., is "for the purpose of *compounding* as hereinafter described," but there do not appear to be any provisions in the Act as to "compounding": the exception, however, seems to refer to cases where the mixing, &c., is in accordance with the demand of the purchaser, as, *e.g.*, in the case of medical prescriptions (cf. s. 7, *post*, p. 232). If the defendant relies upon the exception, it will be incumbent upon him to prove the facts bringing himself within the exception (s. 24).

Label.

Where the matter or ingredient mixed with the food or drug is not injurious to health, and not intended fraudulently to increase its bulk, weight, or measure, or to conceal its inferior quality, the defendant cannot be convicted of offence (c) or (f) if, at the time of delivering the food or drug, he supplied to the person receiving the same a legible *label* written or printed on or with the article to the effect that the same was mixed (s. 8). See further, as to the employment of a label, p. 224.

In the case of a SALE, proceedings are usually taken under s. 6 of the Act of 1875, which provides that—

Every one commits an offence who

Selling article
of food or
drug to
prejudice of
purchaser (g).

S. 6 OF THE
ACT OF 1875.

Form of In-
formation.

post, p. 1224.

- (g) *Sells to the prejudice of the purchaser any article of food or drug which is not of the nature, substance, and quality demanded by such purchaser, except* (i.) where any matter or ingredient not injurious to health has been added because required for the production or preparation of the food or drug as an

(a) (1896) 75 L. T. 514; 60 J. P. 758; 13 T. L. R. 12; 18 Cox, 462.

article of commerce, in a state fit for carriage or consumption, and not fraudulently to increase the bulk, weight, or measure of the food or drug, or to conceal the inferior quality thereof; (ii.) where the drug or food is a proprietary medicine, or is the subject of a patent and is supplied in the state required by the specification; or (iii.) where the food or drug is unavoidably mixed with some extraneous matter in the process of collection or preparation. There is a further exception where the food or drug is "compounded" as mentioned in the Act, but as to this exception, see under OFFENCE (f) (38 & 39 Vict. c. 63, s. 6).

S. 6 OF THE
ACT OF 1875.

PENALTY in respect of offence (g), FINE not exceeding 20*l.*, and in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111).

PENALTY for
offence (g).

For a *second* offence the maximum penalty is 50*l.*; and for any *subsequent* offence 100*l.*, or (if accused were guilty of *personal* default, &c.) *imprisonment*, with hard labour, for *three months* (see *post*, p. 240).

If it is proved that the article has been sold in a mixed state, and the defendant desires to rely on an exception, it will be incumbent upon him to prove the facts bringing himself within the exception (s. 24).

Onus of proof.

It would be no defence to allege that the *purchaser* having *bought only for analysis*, was *not prejudiced* by the sale; nor to prove that the article though defective in nature or in substance or in quality was not defective in all three respects (42 & 43 Vict. c. 30, s. 2). So that the Acts may apply, although the article supplied be *unadulterated*, if it be wholly different from the article demanded—as where *savin* was supplied instead of *saffron* (*Knight v. Bowers*) (b). In a recent case, a purchaser who asked for *margarine* and received an article within the definition of that term in the *Margarine Act*, 1887, was held to be "prejudiced" because the article contained only 75 per cent. of fat. The court is reported to have decided (*Alverstone, C.J., dissenting*) that justices were entitled to act on evidence that *margarine* ought to contain 85 per cent. (*Roberts v.*

Prejudice of
purchaser.

(b) (1885) 14 Q. B. D. 845; 53 L. T. 234; 54 L. J. M. C. 108; 49 J. P. 614.

S. 6 OF THE
ACT OF 1875.

Leeming) (c). And it seems to be held now that there may be a sale "to the prejudice of the purchaser," although he *knew* that the article sold was not of the nature, substance and quality demanded. "*The purchaser*" is apparently to be regarded as "*a purchaser in the abstract*," that is to say, a purchaser without special knowledge except such as is derived "from information given by the seller either by notice, by the nature of the article itself, or by what passed at the time of the purchase." The question is what would be the position, not of a skilled purchaser like an inspector, but of an ordinary person purchasing the article without any special knowledge (*Pearks, Gunston, &c., Limited v. Ward*) (d). But the mere addition of the usual colouring matter (sulphate of copper) to preserved peas, in a quantity insufficient to be injurious to health, does not necessarily *prejudice* the purchaser (*Friend v. Mapp*) (e). And, where an inspector simply asked a milk-seller for "a sample from the churn," and did not in terms ask to be supplied with "milk," it was held that (the inspector having obtained what he demanded) an information under s. 6 of the Act of 1875 had been rightly dismissed (*Sandys v. Jackson*) (f); *sed vide* (m), *post*, p. 235).

Mens rea.

"Guilty knowledge" need not be proved (*Betts v. Armstead*) (g). A mere servant, who performs the physical act of transfer, may be within the section (*Hotchin v. Hindmarsh*) (h).

Protection by
"label"
on sale of
"mixtures."

If the article of food or drug is *mixed* with some matter or ingredient which is not injurious to health, and not intended fraudulently to increase its bulk, weight or measure, or to conceal its inferior quality, the defendant cannot be convicted of offence (g) if, at the time of delivering the article of food or drug, he supplied to the person receiving the same a legible notice by *label*, written or printed *on or with* the article of food or drug, *to the effect that the same was mixed* (38 & 39 Vict.

(c) (1905) 69 J. P. 417; 3 L. G. R. 1031.

(d) [1902] 2 K. B. 1; 71 L. J. K. B. 656; 87 L. T. 51; 66 J. P. 774.

(e) (1904) 68 J. P. 589; 2 L. G. R. 1317.

(f) (1905) 92 L. T. 646; 69 J. P. 171; 3 L. G. R. 285.

(g) (1888) 20 Q. B. D. 771; 57 L. J. M. C. 100; 58 L. T. 811; 36 W. R. 720; 52 J. P. 471.

(h) *Post*, p. 230.

c. 63, s. 8). The label must be so written or printed that the notice of mixture is not obscured by other matter; but this statutory provision does not affect the use of any registered trade mark, or of any label which had been continuously in use for at least seven years prior to January 1st, 1900 (62 & 63 Vict. c. 51, s. 12). The Comptroller-General may not, however, register any trade mark purporting to describe a mixture unless it complies with the statutory requirements (*ib.*). As to condensed (separated or skimmed) milk, see *post*, p. 237.

S. 6 OF THE
ACT OF 1875.

The label will not, of course, afford protection to the vendor if it be shown that he was guilty of *fraud* in the transaction of sale; but, on the other hand, it is not necessary that a label should be supplied *on or with* the article if the purchaser is *in fact* notified, before the purchase, that the article is diluted or mixed with some foreign ingredient. Notice may be given by a placard in the shop or in any other reasonable way if knowledge is brought home to the purchaser. In such case, although the vendor could not rely on the statutory protection arising from notice "by label," there would be no sale *to the prejudice of the purchaser* within the meaning of s. 6 of the Act of 1875 (*Sandys v. Small* (*i*); *Gage v. Elsey* (*k*); *Jones v. Jones* (*l*); and cf. *Heywood v. Whitehead* (*m*)). Again, where an inspector asked a druggist's apprentice for four ounces of "paregoric" and was supplied with a bottle of which the contents did not contain the necessary ingredients according to the formula of the British Pharmacopoeia, the court upheld a dismissal by justices. It appeared that the apprentice (who, being unqualified, could not sell poisons) had put on the bottle a label containing the printed words, "Paregoric—Poison," but had struck out, in pencil, the word "Poison," adding the word "Substitute" (*Bundy v. Lewis* (*mm*)).

Notice other-
wise than "by
label."

But the notice must not be *equivocal* or *misleading*.

(*i*) (1878) 3 Q. B. D. 449; 47 L. J. M. C. 115; 26 W. R. 814; 42 J. P. 550.

(*k*) (1883) 10 Q. B. D. 518; 52 L. J. M. C. 44; 47 J. P. 391.

(*l*) (1894) 58 J. P. 653.

(*m*) (1897) 76 L. T. 781.

(*mm*) (1908) 99 L. T. 833; 7 L. G. R. 55; 72 J. P. 489.

S. 6 OF THE
ACT OF 1875.
Notice other-
wise than
"by label"
—*contd.*

Thus, in one case, a purchaser who asked for "cheese" was supplied with a mixture of skimmed milk and beef fat. The substance was labelled "Valleyfield finest Oleine Cheese," the words "finest Oleine" being in smaller type. The purchaser did not notice the word "oleine," and swore that, if he had, he should not have known what it meant. The vendor was held rightly convicted (*Collett v. Walker*) (n). It would seem, however, that if a notice is put up in a conspicuous position and could be easily read by customers, it is *not* essential for the defendant to prove that the *particular purchaser actually saw it*. Thus, where "half a pound of shilling butter" was asked for, there was a conspicuous notice in these terms: "Notice. Pearks' butter as sold at this establishment is choicest butter blended with English full cream milk by new and improved machinery, whereby it retains about 20 to 24 per cent. of moisture and acquires that delicacy of flavour, &c." The article sold was butter blended with milk so as to contain a considerable percentage of water beyond the 16 per cent. allowed; yet the notice was held (before the Butter and Margarine Act, 1907) sufficient to protect the vendor, although the inspector who purchased the butter did not actually see the notice (*Pearks, Gunston, &c. v. Houghton*) (o). But it would seem that, if the inspector had asked for "best fresh butter," it would have been proper to convict unless the defendant could prove that the inspector had thought fit to look at and read the notice (cf. per *Alverstone, C.J.* in *Hayes v. Rule and Law*) (p).

Cover over
label.

Difficulties sometimes arise where the article, although adequately labelled, is wrapped up in opaque paper or otherwise, so that the label is not visible to the purchaser at the time of delivery. The question as to the sufficiency of the notice would then appear to depend on the facts of the particular case (cf. *Pearks, Gunston, &c. v. Houghton* (q); *Jones v. Jones* (r); and *Star, &c., Co. v. Neale* (rr)).

(n) (1895) 64 L. J. M. C. 267; 59 J. P. 600.

(o) [1902] 1 K. B. 889; 86 L. T. 325; 71 L. J. K. B. 385; 13 T. L. R. 362; 66 J. P. 422. See now *post*, pp. 704, 705.

(p) (1902) 87 L. T. 133; 66 J. P. 661; 18 T. L. R. 535.

(q) *Supra*.

(r) *Ante*, p. 225.

(rr) (1909) 73 J. P. 511.

Again, if the defendant satisfy the Court (a) that he purchased the article in question as the same in nature, substance, and quality as that demanded of him by the prosecutor, and with a *written warranty* to that effect, (β) that he had no reason to believe, at the time when he sold it, that the article was otherwise, and (γ) that he sold it in the same state as when he purchased it, he must be discharged from the prosecution (38 & 39 Vict. c. 63, s. 25). The mere addition of the words "but without accepting any responsibility *after delivery*" do not make the warranty unavailable as a defence (*Wilson v. Playle*) (s). But the defence of "warranty" is not available unless the defendant has *within seven days after service of the summons* sent to the purchaser a copy of the warranty or invoice with a *written notice*, stating that he intends to rely on it, and specifying the name and address of the person from whom he received it. The defendant must also send a *like notice* to such person, who will then be entitled to appear and give evidence at the hearing, and the court may, if necessary, adjourn the hearing to enable him to do so (62 & 63 Vict. c. 51, s. 20). A warranty given by a person resident *outside the United Kingdom* will not be available as a defence unless the defendant proves that he took reasonable steps to ascertain, and did in fact believe in, its accuracy (*ib.*).

The contract for a periodical supply of milk, coupled with a warranty, appeared from a correspondence, and each can of milk was labelled "Warranted pure." The defendant sent with the notice, under the section last cited, a copy of the *label on the cans*, but did not disclose the correspondence. This was held to be a sufficient compliance with the section (*Irving v. Callow Park Dairy Co.*) (t). And see further, as to the sufficiency of notice of defence under this section, *Farthing v. Parkinson* (u). Where a retailer of milk was shown to have added *boric acid*, he was precluded from relying on the defence of "warranty," although the allegation was that he had added *water* to the milk. The defence was not available because the milk was not "*in the same state*

S. 6 OF THE
ACT OF 1875.
Defence of
"warranty."
38 & 39 Vict.
c. 63, s. 25 ;
62 & 63 Vict.
c. 51, s. 20.

(s) (1903) 88 L. T. 554 ; 1 L. G. R. 870 ; 67 J. P. 263 ; 20 Cox, 433.

(t) (1902) 87 L. T. 70 ; 66 J. P. 804 ; 20 Cox, 295.

(u) (1904) 90 L. T. 783 ; 2 L. G. R. 989 ; 68 J. P. 353.

S. 6 OF THE
ACT OF 1875.

Defence of
"warranty"
—*contd.*

38 & 39 Vict.
c. 63, s. 25;
62 & 63 Vict.
c. 51, s. 20.

as when he purchased it," so that 38 & 39 Vict. c. 63, s. 25, did not apply (*Hennen v. Long*) (x).

In order to protect the vendor the warranty must be express, and not a mere invoice (*Rook v. Hopley*) (y). But, where a manufacturer contracted with the defendant in these terms, "We have this day sold to you 3 tons K.'s pure lard for delivery to end of Jan., 1893," and a parcel of lard was delivered under the contract on December 23rd, 1892, it was held that the contract contained a sufficient warranty of the lard within the statute (*Laidlaw v. Wilson*) (z). There must be a *representation forming an essential term* of the bargain between the buyer and the seller, and such representation must be *in writing*. An *invoice* may be looked at for the purpose of identifying the article sold with the article purchased under the contract, but not as containing the warranty itself (*Iorns v. Van Tromp*) (a); unless, indeed, the invoice were given *at the time of sale*, in which case it might afford sufficient evidence of a warranty (*Hawkins v. Williams*) (b). Moreover, the warranty must be a warranty relating specifically to the bulk from which the article in question was taken, and not a mere undertaking that pure goods will be supplied (*Harris v. May*) (c). In *Elliott v. Pilcher* (d) a dairyman gave the defendant a *written* warranty that "each and every supply of milk should be new milk, unadulterated and with all its cream," and the defendant was held entitled to prove by *oral* evidence that a consignment of milk, which was deficient in fat, was purchased under the warranty. This decision has, however, been disapproved, and it has recently been held that, in such a case, if there is no *written* evidence connecting the warranty with the milk subsequently delivered, the defendant is not entitled to protection

(x) (1904) 90 L. T. 387; 20 Cox, 608; 68 J. P. 237.

(y) (1878) L. R. 3 Ex. D. 209; 47 L. J. M. C. 118; 38 L. T. 649; 26 W. R. 663; 42 J. P. 551.

(z) [1894] 1 Q. B. 74; 63 L. J. M. C. 37; 42 W. R. 78; 58 J. P. 58.

(a) (1895) 59 J. P. 246.

(b) (1895) 59 J. P. 533.

(c) (1884) 12 Q. B. D. 97; 53 L. J. M. C. 39; 32 W. R. 595; 48 J. P. 261.

(d) [1901] 2 K. B. 817; 70 L. J. K. B. 795; 85 L. T. 50; 65 J. P. 743.

under the statute (*Watts v. Stevens*) (*e*). But *Watts v. Stevens* was "distinguished" in a case where there was a contract to supply a dairyman for twelve months with the *whole* of the milk required for his dairy. It was held that there was sufficient connection between the contract and the particular consignment to protect the dairyman (*Evans v. Weatheritt*) (*f*). And, where a contract to supply milk during a period of several months contained a warranty of purity as to each delivery, and was *coupled with a label* fixed to the churn from which the analysed sample was taken, stating that the milk was genuine new milk, this was held to be a sufficient warranty (*Farmers' Co. v. Stevenson*) (*g*). So, in a later case, the defendant was protected where he had made a *verbal* agreement with the farmer to supply milk daily, and to give a *written warranty with each churn*. The churns were labelled "Warranted pure" (*Bacon v. Callow Park Dairy Co.*) (*h*). And, in a recent case, a specified quantity of warranted pure new milk had, during a fixed period, been supplied daily under a *written* contract, a label being attached to each churn stating that the milk was pure new milk. After the expiration of the period, the supply continued under a *verbal* arrangement, *nothing being said as to the quality of the milk to be supplied*, but a label was attached to each churn as before. It was held that the label constituted a sufficient warranty (*Lewis v. Weatheritt*) (*hh*). In *Iorns v. Van Tromp* (*i*) it had been held that the defendant was not protected by printed labels "Warranted genuine pure ground ginger"; but, in that case, there was not *at the time of the sale* any agreement, verbal or otherwise, as to the giving of a warranty, and, therefore, no consideration to support the warranty alleged. It was formerly held that, if proceedings were taken against a man who sells simply as agent for his

S. 6 OF THE
ACT OF 1875.

Defence of
"warranty"
—*contd.*

And see
Draper v.
Newham,
17th Jan.
1910 (K.B.D.).

Position of
servant or
agent.

(*e*) [1906] 2 K. B. 323; 75 L. J. K. B. 828; 95 L. T. 200; 22 T. L. R. 622; 70 J. P. 418; 4 L. G. R. 821.

(*f*) [1907] 2 K. B. 80; 76 L. J. K. B. 628; 96 L. T. 641; 71 J. P. 228. Cf. also *Rees v. Davis* (1908), 72 J. P. 375.

(*g*) (1891) 60 L. J. M. C. 70; 63 L. T. 776; 55 J. P. 407.

(*h*) (1902) 66 J. P. 804; 87 L. T. 70; 18 T. L. R. 573.

(*hh*) (1909) 100 L. T. 367; 7 L. G. R. 502; 73 J. P. 164; 25 T. L. R. 226.

(*i*) *Supra*.

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ACT OF 1875.

master, the defendant could not rely on a warranty given to the master on the purchase of the article by the latter (*Hotchin v. Hindmarsh*) (*k*); but it is now enacted that a servant may rely on such a warranty in the same way as his employer or master might have done, provided that the servant further proves that he had no reason to believe that the article was otherwise than that demanded by the prosecutor (62 & 63 Vict. c. 51, s. 20 (iv.)). As to "place of delivery," see *post*, p. 237.

Liability for
act of servant,
or of a
stranger.

It is very difficult to reconcile the cases relating to the liability of a master under section 6 of the Act of 1875 (38 & 39 Vict. c. 63), for the *unauthorized* act of his servant (cf. *Kearley v. Tonge* (*l*) and *Brown v. Foot* (*m*)). It is submitted that the master should clearly be held responsible if an agent or servant acted *within the scope of his employment*, although in contravention of the general directions of his master (cf. *post*, p. 629). And, indeed, in one case, a vendor was actually held to be liable when the adulteration was caused by a *stranger without the knowledge or consent* of the vendor, his servants, or agents (*Parker v. Alder*) (*n*).

Spirits diluted
by added
water.

Where the adulteration alleged is the adulteration of *spirits* by an admixture of *water*, it is a good defence to prove that such admixture has not reduced the spirit more than 25 degrees under proof for *brandy*, *whisky*, or *rum*, or 35 degrees under proof for *gin* (42 & 43 Vict. c. 30, s. 6). Proof spirit, we may observe, according to the British Pharmacopœia, contains about 50 per cent. of water. The defence of "notice" to the purchaser (*ante*, p. 225) is, of course, open to the defendant in cases of dilution (*Palmer v. Tyler*) (*o*). A notice was posted up in an inn: "All spirits sold . . . are of the same quality and strength as heretofore, but, in order to comply with the Sale of Food and Drugs Acts, will not be of any guaranteed strength." This, however, was held by a majority of the court not to be sufficient

(*k*) [1891] 2 Q. B. 181; 55 J. P. 775.

(*l*) (1891) 60 L. J. M. C. 159; 65 L. T. 261; 56 J. P. 72.

(*m*) (1892) 61 L. J. M. C. 110; 66 L. T. 649; 56 J. P. 581.

(*n*) [1899] 1 Q. B. 20; 68 L. J. Q. B. 7; 79 L. T. 381; 47 W. R. 142; 62 J. P. 772.

(*o*) (1897) 61 J. P. 389.

notice of *dilution* below the standard (*Dawes v. Wilkinson*) (*p*). S. 6 OF THE
ACT OF 1875.

The composition of "compound drugs" is specially dealt with (see OFFENCE (*h*), p. 232, and *ante*, p. 222); but proceedings are usually taken under s. 6 of the Act of 1875, and an attempt is often made to set up the British Pharmacopœia as affording an absolute standard to which justices must of necessity adhere. There seems no doubt that, where a purchaser asks for a drug by a name under which its constituent parts are specifically given in the British Pharmacopœia, justices may convict if one or more of the ingredients be not present in the quantity prescribed—although it may be the practice of druggists to make and supply a weaker preparation (*Dickins v. Randerson*) (*q*). At the same time, evidence is admissible to show that there is a *commercial* standard of the article differing from that prescribed by the British Pharmacopœia, and such evidence should be considered and, if satisfactory, acted upon by the court (*Boots Cash Chemists v. Cowling*) (*r*). On an information, under s. 6 of the Act of 1875, it was proved that a sample of vinegar of squills contained less acetic acid than if it had been freshly made in accordance with the formula of the British Pharmacopœia, which does not, however, fix a standard as to the amounts of the ingredients of vinegar of squills *in its finished state*. Now, vinegar of squills, even though properly kept, gradually undergoes a loss of acetic acid; but the justices (without inquiry as to the actual effect of a deficiency of acetic acid) convicted the defendant. The court held that there was no evidence to justify such conviction (*Hudson v. Bridge*) (*s*).

Where a licensed person is convicted of any offence relating to the adulteration of drink, such conviction must be entered in the register of licences; see 37 & 38 Vict. c. 49, s. 14; and see further, *post*, p. 604.

Drugs.

Adulteration
of drink.

(*p*) [1907] 1 K. B. 278; 76 L. J. K. B. 182; 96 L. T. 26; 71 J. P. 23; 5 L. G. R. 1; 23 T. L. R. 34; 21 Cox, 340.

(*q*) [1901] 1 K. B. 437; 70 L. J. K. B. 344; 84 L. T. 204; 65 J. P. 262.

(*r*) (1903) 88 L. T. 539; 67 J. P. 195; 20 Cox, 420; 1 L. G. R. 884.

(*s*) *Ante*, p. 214.

Offence as to
compounded
articles (h).

- (h) Everyone commits an offence who *sells any compound article of food, or compounded drug*, which is not composed of ingredients in accordance with the demand of the purchaser (38 & 39 Vict. c. 63, s. 7).

The vendor may protect himself by supplying a *label*, or by securing a written *warranty* under the circumstances mentioned under OFFENCE (g) (and see *ante*, p. 222).

PENALTY.—FINE, not exceeding 20*l.*, and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111). For a *second* and *subsequent* offences the maximum penalties are as in (g).

Abstracting
part of an
article of
food (i).

- (i) Every person commits an offence who, with intent that the same may be sold in its altered state without notice, *abstracts* from any *article of food* any part of it, so as injuriously to affect its quality, substance or nature (38 & 39 Vict. c. 63, s. 9).

PENALTY.—FINE, not exceeding 20*l.*, and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111). For a *second* and *subsequent* offences the maximum penalties are as in (g).

Selling article
after abstrac-
tion of
part (j).

- (j) Everyone commits an offence who *sells* any article of food *altered by the abstraction* therefrom of any part of it, so as injuriously to affect its quality, substance, or nature, *without making disclosure* of the alteration (38 & 39 Vict. c. 63, s. 9).

As to when it is to be *presumed* that milk-fat has been abstracted from milk, see *ante*, p. 216.

It is unnecessary to prove guilty knowledge on the part of the seller (*Pain v. Boughtwood* (t); *Dyke v. Gower* (u)). But the seller may protect himself by securing a written *warranty* under the circumstances mentioned under OFFENCE (g).

It is uncertain whether the burden of proof as to "disclosure" rests on the prosecution or on the defendant (*per cur.* in *Spiers and Pond v. Bennett*) (x).

(t) (1890) 24 Q. B. D. 353; 59 L. J. M. C. 45; 54 J. P. 469; 62 L. T. 284; 16 Cox, 747; 38 W. R. 428.

(u) [1892] 1 Q. B. 220; 61 L. J. M. C. 70; 65 L. T. 760; 56 J. P. 168; 17 Cox, 421.

(x) [1896] 2 Q. B. 65; 65 L. J. M. C. 144; 74 L. T. 697; 44 W. R. 510; 60 J. P. 437.

As to what amounts to a sufficient "disclosure," see *Evan Jones v. Davies* (y); *Petchey v. Taylor* (z); *Platt v. Tyler* (a); *Spiers and Pond v. Bennett* (b). In the case last cited it was held to be a sufficient "disclosure" of a deficiency in cream (caused by the milk being so poured out that most of the cream remained behind) when the vendors of milk gave notice that they took all precautions, but they were "unable to guarantee it as either new, pure, or with all its cream, and (to meet the requirements of the Sale of Food and Drugs Act) did not, therefore, sell it as such." The other cases cited show that, where condensed milk from which nearly the whole of the fat had been abstracted is sold or labelled as "skimmed milk," this amounts to a sufficient "disclosure," unless, indeed, it were proved that the quantity of cream abstracted was far in excess of that which could possibly have been abstracted by the "skimming" process. And see also 62 & 63 Vict. c. 51, s. 11 (*post*, p. 237).

Disclosure of alteration.

PENALTY.—FINE, not exceeding 20*l.*, and, in default of distress, imprisonment, *without* hard labour, according to scale (p. 111). For a *second* and *subsequent* offences the maximum penalties are as in (g).

Penalty for offence (j).

(k) Everyone commits an offence who (i.) *wilfully applies* to an article of food, or a drug, in any proceedings under the Act a *certificate* or *warranty* given in relation to any *other* article or drug; or (ii.) *wilfully gives a label* with any article sold by him which *falsely describes* the article sold (38 & 39 Vict. c. 63, s. 27). Everyone commits an offence who, in respect of an article of food or drug sold by him as principal or agent, gives to the purchaser a *false warranty* in *writing*, unless he *satisfies the court* that, when he gave the warranty, he had *reason to believe* that the statements or description contained therein were true (62 & 63 Vict. c. 51, s. 20 (vi.)).

Frauds as to certificates, warranties or labels (k).

PENALTY.—FINE, not exceeding, for *first* offence, 20*l.*; for a *second* offence, 50*l.*; for any *subsequent* offence, 100*l.*; recoverable as above. And see *post*, p. 240, as to imprisonment without the option of fine in case of a third offence.

(y) (1893) 69 L. T. 497; 57 J. P. 808.

(z) (1898) 78 L. T. 501; 62 J. P. 360; 19 Cox, 38.

(a) (1894) 58 J. P. 71.

(b) *Ante*, p. 232.

False
warranties.

Forging, or knowingly uttering, a certificate or a document purporting to contain a warranty is an *indictable* misdemeanour punishable with *two* years' hard labour (38 & 39 Vict. c. 63, s. 27).

Proceedings, under s. 20 (vi.) of the Act of 1899, against the original vendor for giving a false warranty must be commenced within six months from the date of *the giving of the warranty* (*Whitaker v. Pomfret Brothers*) (c).

Venue.

Where a defendant has secured his discharge by the production of a warranty under s. 25 of the Act of 1875 (*ante*, p. 227), proceedings for giving the *false warranty* may be taken as well before a court having jurisdiction where the article was purchased for analysis as before a court having jurisdiction where the warranty was given (62 & 63 Vict. c. 51, s. 20 (v.)).

Successive
warranties.

"But the legislature," said *Channell, J.*, "did not consider the case of *successive* warranties and did not provide for it." So that, if A. in county X. sells milk, with a warranty, to B. of county Y., and B. in county Y. sells the milk, with a warranty, to C., who retails the milk in county Z., A. cannot under this sub-section be prosecuted in *county Y.* for giving a false warranty. If C. be prosecuted under s. 6 of the Act of 1875, the warranty given to him by B. might afford a good defence under s. 25 of the same Act; but, if B. be then prosecuted (as he may be either in county Y. or county Z.) for giving a false warranty, his answer to the charge would *not* be under s. 25—that he purchased with a warranty—but, under s. 20 (vi.) of the the Act of 1899, that "he had reason to believe that the statements contained" in the warranty *given* by him were true; and of this belief, the warranty *received* by him from A. would be *evidence* (*Manners v. Tyler*) (d).

Cf. *ante*,
p. 227.

Cf. *ante*,
p. 233.

Refusing to
sell sample to
a public
officer (1).

Cf. *ante*,
p. 211.

(1) If the medical officer of health, inspector of nuisances, or of weights and measures, or of a market, or other authorized officer or constable, requires to purchase an article of food or a drug for the purpose of analysis, he must *tender* the price for such quantity as is reasonably requisite for that purpose. And, if such article *is exposed to sale*, or is

(c) [1902] 1 K. B. 661; 71 L. J. K. B. 353; 86 L. T. 420; 66 J. P. 408.

(d) [1902] 1 K. B. 901; 71 L. J. K. B. 585; 86 L. T. 716; 66 J. P. 806.

on sale by retail on any premises, or in any shop or stores, or in any street or open place of public resort, the person who exposes the article for sale will commit an offence should he *refuse* to sell after such a tender (38 & 39 Vict. c. 63, s. 17; 42 & 43 Vict. c. 30, s. 5; 62 & 63 Vict. c. 51, s. 2).

Refusal to sell sample.

Where the article is exposed for sale in an *unopened* tin or packet duly *labelled*, the vendor cannot be required to sell it except in the unopened tin or packet (62 & 63 Vict. c. 51, s. 18).

It is desirable to notify to the seller that the article is being purchased for the purpose of analysis by the public analyst; but the officer need not produce his authority unless it is asked for (*Payne v. Hack*) (*c*). It is, perhaps, doubtful whether an inspector is entitled to go into a shop and insist upon purchasing a sample out of any vessel he likes, but, if he has already been supplied out of a particular vessel, he is entitled to have a sample taken from that vessel (*ib.*). If there is no evidence that an article is being exposed for sale as being an article such as is demanded by the inspector, a refusal to supply would not constitute an offence: thus, where an inspector said, "I want a pint of *new milk* out of this can," and the can in question contained *skimmed milk*, it was held that the milkman committed no offence by deliberately upsetting the can and refusing to supply a sample. There was no evidence that the man exposed the milk for sale as new milk (*French v. Card*) (*ee*).

PENALTY.—FINE, not exceeding 10*l.*, and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111).

Penalty.

(*m*) So far as *milk* is concerned, such medical officer, inspector, or constable may procure, at the *place of delivery*, a sample of any milk *in course of delivery* to the purchaser or consignee, in pursuance of any contract of sale to him; and proceedings in respect of adulteration or abstraction may be taken as *though the milk had been purchased for analysis*. And, if the seller, or consignor, or any person

Obtaining samples of *milk* where deliveries are under contract—Act of 1879.

Form of information, *post*, p. 1224.

(*c*) (1893) 58 J. P. 165; 95 L. T. (N.) 83.

(*ee*) (1909) 101 L. T. 428; 7 L. G. R. 890; 73 J. P. 389.

Refusing to supply sample (m).

intrusted by him with the charge of the milk, *refuses* to allow the medical officer, inspector, or constable to take the milk, the person so refusing commits an offence (42 & 43 Vict. c. 30, ss. 3, 4).

Penalty for refusing to supply sample.

PENALTY.—FINE, not exceeding 10*l.*, and, in default of distress, imprisonment, *without* hard labour, according to scale (p. 111).

Proceedings under this statute, which is usually put into operation in the case of *wholesale* deliveries of milk under a contract, *must*, therefore, be instituted by a *public officer*. It will consequently be necessary to prove as a condition precedent that the officer was a duly authorized official (cf. *Harris v. Williams*) (*f*). But the sample may be taken by an *agent* of the inspector, and the prosecution instituted in the name of the inspector (*Tyler v. Dairy Supply Co.* (*ff*)).

The officer demanding the sample need not give notice of an intention to have the milk analysed, or divide the sample (*Rouch v. Hall*) (*g*). Nor, under s. 15 of the Act of 1875 (now repealed), was it necessary to forward the *whole* of the sample to the analyst (*Rolfe v. Thompson*) (*h*).

The power to procure the sample in course of delivery *cannot* be exercised by an inspector *outside the district* for which he is appointed (*McNair v. Cave*) (*i*).

Sample for consignor.

If the name and address of the consignor appear on the milk can, the person taking the sample must forward to the consignor by registered parcel or otherwise a portion of the sample, marked, and sealed or fastened up (62 & 63 Vict. c. 51, s. 10).

"Place of delivery."

Even if the purchaser agrees to pay the carriage, and the milk is to be sent by railway to a station to be appointed by the purchaser, the station to which the milk is sent by the direction of the purchaser has been

(*f*) (1889) 6 T. L. R. 47.

(*ff*) (1908) 98 L. T. 867; 72 J. P. 132; 6 L. G. R. 422; 21 Cox, 612.

(*g*) (1881) 6 Q. B. D. 17; 50 L. J. M. C. 6; 44 L. T. 183; 45 J. P. 220.

(*h*) [1892] 2 Q. B. 196; 61 L. J. M. C. 184; 67 L. T. 295; 56 J. P. 425; 17 Cox, C. C. 551.

(*i*) [1903] 1 K. B. 24; 72 L. J. K. B. 26; 87 L. T. 680; 51 W. R. 112; 67 J. P. 50.

held to be the "place of delivery," notwithstanding the provision for the payment of carriage by the purchaser (*Filshie v. Ervington*) (k). And, on a defence of "warranty" under s. 25 of the Act of 1875, it was held sufficient to show that the milk was sold in the same state as when received by the defendant at the station to which it had been consigned by the farmer; but, in that case, the milk was to be "delivered carriage paid" to that station (*Sanders v. Sadler*) (l). And see *Parker v. Alder* (m).

Cf. *ante*,
p. 227.

These provisions as to the taking of samples of milk in course of delivery now apply to *every other article of food*, provided that, in the case of an article other than milk, the sample cannot be taken *except upon the request or with the consent of the purchaser or consignee* (62 & 63 Vict. c. 51, s. 14).

Obtaining
samples of
other articles
in course of
delivery—Act
of 1899.

(n) Everyone who, himself or by his servant, in any *highway or place of public resort* sells *milk or cream* from a vehicle, or from a can or other receptacle, commits an offence unless his *name and address* be conspicuously inscribed on the vehicle or receptacle (62 & 63 Vict. c. 51, s. 9).

Regulations
as to name
and address of
person selling
milk or cream
in a public
place (n).

Where a milk seller, with milk in a cart, occasionally left the cart and walked from house to house supplying milk from a can, it was held that, in case of a sale from the cart, there must be the name and address on the cart; and, in case of a sale from the can, the name and address must be on the can (*Crabtree v. Skelton*) (n).

PENALTY.—FINE, not exceeding 2l., recoverable as in (m).

(o) Every tin or other receptacle containing *condensed separated or skimmed milk* must bear a *label* clearly visible to the purchaser on which the words "Machine-skimmed Milk" or "Skimmed Milk," as the case may require, are printed in large and legible type. Everyone commits an offence who

Condensed
separated or
skimmed
milk to be
labelled (o).

(k) [1892] 2 Q. B. 200; 66 L. T. 199; 56 J. P. 312; 40 W. R. 380.

(l) (1906) 95 L. T. 872; 5 L. G. R. 240; 23 T. L. R. 11; 21 Cox, 316; 71 J. P. 3.

(m) Cited *ante*, p. 230.

(n) (1901) 70 L. J. K. B. 560.

sells or exposes or offers for sale milk in contravention of this provision (62 & 63 Vict. c. 51, s. 11).

"This section," said *Alverstone*, C.J., "does not apply to milk carried round for sale in an ordinary can, but only to *condensed milk*" (*French v. Card*, cited *ante*, p. 235).

PENALTY.—FINE, not exceeding 10*l.*, recoverable as in (m).

Obstruction of officer in discharge of his duties.

Bribery of officer (p).

(p) Everyone commits an offence who wilfully *obstructs* or *impedes* any inspector or other officer in the course of his duties under the Sale of Food and Drugs Acts, or by any *gratuity, bribe, promise* or other *inducement* prevents, or attempts to prevent, the due execution of his duty (62 & 63 Vict. c. 51, s. 16).

PENALTY.—FINE, not exceeding 20*l.*, recoverable as in (m); for a *second* offence the maximum penalty is 50*l.*, and for any *subsequent* offence 100*l.* And see *post*, p. 240, as to awarding *peremptory* imprisonment for a *third* offence.

Importation of agricultural and other produce insufficiently marked (q).

(q) Provision is made prohibiting the *importation* into the United Kingdom of:—

(a) *Margarine* or *Margarine Cheese*, except in packages *conspicuously marked* "*Margarine*" or "*Margarine Cheese*," as the case may require (cf. *post*, pp. 697 - 703).

(β) *Adulterated* or *impoverished* (i.) milk, (ii.) cream, (iii.) article of food to which the section has been applied by Order in Council, unless in packages or receptacles *conspicuously marked* with a name or description indicating that it has been so treated. The article is to be deemed adulterated or impoverished if it be mixed with any other substance (other than preservative or colouring matter, if innocuous) or if any part of it has been abstracted, so as in either case to affect injuriously its quality, substance, or nature.

(γ) *Condensed separated* or *skimmed milk*, except in receptacles bearing a *label* whereon the words "*Machine-skimmed Milk*" or "*Skimmed Milk*," as the case may require, are printed in large and legible type (62 & 63 Vict. c. 51, s. 1).

- (δ) Butter containing more than 16 per cent. of water (7 Edw. 7, c. 21, s. 5 (i.)).
- (ε) Margarine containing more than 16 per cent. of water, *or* more than 10 per cent. of butter fat (*ib.*).
- (ζ) Milk-blended butter containing more than 24 per cent. of water (*ib.*).
- (η) Milk-blended butter, except in packages conspicuously marked with such name as may be approved by the Board of Agriculture (*ib.*).
- (θ) Butter, margarine or milk-blended butter which contains a preservative prohibited by the regulations, or an amount of a preservative in excess of the amount allowed by the regulations (*ib.*).

Importation
of agricul-
tural and
other produce
insufficiently
marked
—*contd.*

The prosecution must be undertaken by the Commissioners of Customs, who may take the necessary samples of consignments, dividing the sample into not less than three parts, one for themselves, one for the importer, and one for the principal chemist of the Government laboratories. If the sample is certified to be margarine or milk-blended butter, the Commissioners must notify the importer forthwith (7 Edw. 7, c. 21, s. 5 (iv.)). The certificate of this chemist will be sufficient evidence of the facts stated, unless the defendant require the presence of the person who made the analysis. This certificate need not be in the form prescribed by the Sale of Food and Drugs Act, 1875 (*ante*, p. 214): it need not even state that no change has taken place in the constitution of the article that would interfere with the analysis (*Foot v. Findlay*) (*nn*).

Procedure
(offence (q)).

The certificate (or, if the person who made the analysis is called as a witness, the evidence of that person) raises a presumption, until the contrary is proved, that a substance is margarine or milk-blended butter; and if the defendant requires the analyst to attend, he must give at least three clear days' notice before the return day, and deposit a sum to cover the cost of his attendance (7 Edw. 7, c. 21, s. 5 (iii.)). And, in respect of this offence (q), it is not open to the defendant to set up that he received the article with a written warranty of purity, in the truth of which he believed. Such

(*nn*) [1909] 1 K. B. 1; 78 L. J. K. B. 48; 99 L. T. 798; 6 L. G. R. 1129; 72 J. P. 494; 25 T. L. R. 10.

defence is only available where there has been a sale of the adulterated article (*Kelly v. Lonsdale*) (o).

Penalty for offences as to importation (q).

Every "importer" (including any person who, whether as owner, consignor, or consignee, agent or broker, is in possession of, or in anywise entitled to the custody or control of, the article) is liable, if he disregard these provisions, to the following—

PENALTY.—FINE not exceeding, for first offence, 20*l.*; for second offence, 50*l.*; for any subsequent offence, 100*l.* The fines are recoverable as in (m).

Where the article in question is butter, margarine, margarine-cheese, or milk-blended butter, the maximum penalty may, at the election of the Commissioners, be a fine "equal to the value of the goods imported bearing the same mark or description, to be estimated and taken according to the rate and price for which goods of the like kind, but of the best quality, were sold at or about the time of importation" (7 Edw. 7, c. 21, s. 5 (ii.)). It seems that no appeal lies to quarter sessions against a conviction for this offence, *i.e.* OFFENCE (q), *ante*, p. 238. (*R. v. Otto Monsted*) (p).

Imprisonment without option of fine.

Where, under any provision of the Sale of Food and Drugs Act, the defendant is liable to a fine *exceeding* 50*l.*, and the offence was, in the opinion of the court, committed by the *personal* act, default, or culpable negligence of the accused, the court may sentence him to *imprisonment*, with or without hard labour, for not more than *three months* (62 & 63 Vict. c. 51, s. 17 (ii.)).

Other statutory provisions.

As to the Adulteration of Beer, see 48 & 49 Vict. c. 51 (the Customs and Inland Revenue Act, 1885), and as to the meaning of "dilute" in reference to the practice of mixing two beers of different strengths, cf. *Crofts v. Taylor* (q).

Adulteration of beer.

Provision, as to the Adulteration of Seeds by killing or dyeing them with intent to defraud, is made as follows:—

(o) [1906] 2 K. B. 486; 75 L. J. K. B. 822; 95 L. T. 427; 22 T. L. R. 655; 4 L. G. R. 949; 70 J. P. 441.

(p) [1906] 2 K. B. 456; 75 L. J. K. B. 629; 70 J. P. 435.

(q) (1887) 19 Q. B. D. 524; 56 L. J. M. C. 137; 57 L. T. 310; 51 J. P. 789.

ADULTERATION OF SEEDS ACT, 1869

(32 & 33 Vict. c. 112).

Everyone commits an offence who, *with intent to defraud or to enable another person to defraud*, (a) kills seeds, or causes them to be killed, or (β) dyes seeds, or causes them to be dyed, or (γ) sells, or causes to be sold, any killed or dyed seeds (s. 3). Offences in relation to seeds.

To *kill* seeds, means to destroy by artificial means their vitality or germinating power (s. 2).

To *dye* seeds means to apply to them any process of colouring, dyeing, or sulphur smoking (41 & 42 Vict. c. 17).

It is not necessary to prove that the defendant intended to defraud *any particular person*, or intended to enable any particular person to defraud any particular person (32 & 33 Vict. c. 112, s. 5).

In respect of the offence (γ), the complaint must be laid within *twenty-one days* from its commission (*ib.* s. 7).

PENALTY.—FINE of 5*l.* and, in default of *distress*, imprisonment *without* hard labour according to scale (p. 111). For a second or subsequent offence the fine may be 50*l.*, and there is special provision as to ordering publication of the offence in the newspapers or otherwise. Penalty.

Appeal lies to quarter sessions (s. 6), and there is a special provision as to the costs of an unreasonable prosecution (s. 8). Appeal.

As to the Adulteration of Tea, see 38 & 39 Vict. c. 63 (Food and Drugs Act, 1875), s. 30. Tea.

As to the Adulteration of Coffee and Chicory by mixing therewith imitations or substitutes of coffee or chicory, see 45 & 46 Vict. c. 41 (the Customs and Inland Revenue Act, 1882). Coffee.

There are other statutes relating to the adulteration of bread (see *post*, p. 340), coffee, cocoa, hops, snuff, tobacco, &c. ; but proceedings are now rarely, if ever, taken under these statutes.

As to the *Adulteration of Agricultural Fertilizers and Feeding Stuffs* for cattle, see title "FERTILIZERS AND FEEDING STUFFS," *post*, p. 470.

ADVERTISEMENTS.

Bye-laws
regulating
advertisements.

In municipal boroughs, and in urban districts of which the population at the last census exceeded 10,000, the *local authority*, and elsewhere the *county council*, may make BYE-LAWS for—

- (a) The regulation and control of hoardings and similar structures used for the purpose of advertising, provided that they exceed twelve feet in height.
- (β) Regulating, restricting, or preventing the exhibition of advertisements in such places and in such manner, or by such means, as to affect injuriously the amenities of a public park or pleasure promenade, or to disfigure the natural beauty of a landscape (*Advertisements Regulation Act, 1907* (7 Edw. 7, c. 27), s. 2).

The maximum PENALTY is 5*l.*, with a daily penalty of 1*l.* for each day of continuance after conviction (*ib.* s. 10); and provision is made for the exemption of hoardings, &c., in use at the time of the making of the bye-laws. See also *Indecent Advertisements Act, 1889*, *post*, p. 568.

AGENTS.

The offence ordinarily known as embezzlement is that committed by a *clerk or servant* who misappropriates property received by him for or on account of his employer. The accused cannot be convicted of that felony if it appears that he was acting as an *agent* and not as a clerk or servant (see title "EMBEZZLEMENT AND FALSIFICATION OF ACCOUNTS," *post*, p. 437).

There is, however, a general provision that everyone is guilty of an *indictable* misdemeanour, punishable by seven years' penal servitude, and triable only at *assizes*, who

- (a) Being entrusted, *either solely or jointly with any other person*, with *property* in order that he may retain it

Fraudulent
conversion
by agents.
Forms of
Information,
post, p. 1220.

(or any part of it or its proceeds) in safe custody or *apply, pay, or deliver* it (or any part of it or its proceeds) for any purpose or to any person ; or,
 (β) Having, *either solely or jointly with any other person, received property* for or on account of any other person,

fraudulently *converts* the property (or any part of it, or its proceeds) to his own use or benefit, or to the use or benefit of any other person (1 Edw. 7, c. 10, s. 1).

But this provision does not apply to *trustees* under an express trust created by deed or will, nor to *mortgagees* of property, real or personal, in respect of acts done in relation to the trust or mortgaged property.

As to frauds by TRUSTEES, see *post*, p. 914.

Where the prisoner was employed to collect for the prosecutor the debts of customers set forth in a list, and to account weekly for his collections, after deducting 5 per cent. for his own remuneration, it was held that the prisoner "received the moneys for and on account of" the prosecutor within the meaning of clause (β) (*R. v. Lord*) (r).

Moreover, everyone commits a misdemeanour who, being entrusted, solely or jointly, with any *power of attorney*, for the sale or transfer of any property, fraudulently sells or transfers or otherwise converts any part of such property to his own use or to the use of a third person. [Penal servitude for seven years.] (24 & 25 Vict. c. 96, s. 77.)

Malversation
under power
of attorney.

The offence is triable only at *assizes* and cannot be dealt with summarily.

The case of *factors or agents* fraudulently *transferring or obtaining advances* on the property or documents of title entrusted to them as such factors or agents, for sale or otherwise, is provided for by 24 & 25 Vict. c. 96, s. 78. The section deals with the frauds of a factor or agent, who, in violation of good faith, disposes of the goods or documents of title by way of pledge, lien or security, or accepts advances on the faith of an agreement so to dispose of them. It protects the factor or agent, however, where the sum raised does not exceed the amount justly due to the agent from his principal, together with

Factors
fraudulently
obtaining
advances.

(r) (1905) 69 J. P. 467.

the amount of the principal's bills accepted by the factor or agent. The offence is a *misdemeanour* which cannot be dealt with summarily and is triable only at *assizes*.

AGRICULTURAL GANGS.

Agricultural
gangs.

District councils and the councils of county boroughs may grant licences for a period of six months to certain persons known as "gangmasters," who must not be persons holding licences for the sale of intoxicating liquors (56 & 57 Vict. c. 73, s. 27). Appeal lies to quarter sessions against a refusal to grant such a licence (30 & 31 Vict. c. 130, ss. 6, 7). Gangmasters are persons, whether male or female, who hire children, young persons or women with a view to their being employed in agricultural labour on lands not in the occupation of the gangmaster (s. 3).

Offences.

A gangmaster commits an offence if he employs a child under [eight] years of age; a female in the same gang with males; or a female under a male gangmaster unless a female, licensed to act as gangmaster, is also present. The occupier of the land on which such employment takes place is, moreover, guilty of an offence unless he can show that the employment was without his knowledge.

Penalty.

PENALTY.—FINE, not exceeding 1*l.* for each person so employed (s. 4).

The employment of children, and the ages at which they can be taken into employment, are now, however, regulated by the Elementary Education, Factory, and Employment of Children Acts (see *post*, pp. 432, 435, 368).

If any person acts as gangmaster without a licence, he becomes obnoxious to a penalty of 1*l.* for each day that he so acts (s. 5); while, if a gangmaster violates the conditions of his licence, he is liable to a penalty of 10*s.* (s. 7).

On a second or third conviction the licence may be withheld for prescribed periods, and, on a further conviction, the licensee becomes disqualified to hold a licence (s. 10).

THE ALIENS ACT, 1905.

This statute provides for the inspection of alien steerage passengers about to land in the United Kingdom, and gives power to prevent the landing of immigrants who are poor or otherwise undesirable (5 Edw. 7, c. 13, s. 1). Any *immigrant* who lands, or any *master of a ship* who allows an immigrant to be landed, in contravention of the Act, commits an *offence* thereunder. For PENALTY see *post*, p. 246.

Excluding alien immigrants.

If it is *certified* to the Secretary of State by a court of summary jurisdiction—

Expulsion of aliens.
Forms,
p. 1136.

(a) That an alien has been *convicted by that court* of any *offence* for which the court has power to imprison *without* the option of fine, or of an offence under s. 54 (xi.) of Metropolitan Police Act, 1839, which relates to prostitutes loitering in the streets, AND that the court recommend that an *expulsion order* should be made, either in addition to or in lieu of sentence;

(β) (After proceedings taken, within *twelve months* of an alien's arrival, in accordance with "The Summary Jurisdiction (Alien) Rules, 1906") that the alien (i.) has within three months been in *receipt of relief* disqualifying him for the parliamentary franchise, or been *found wandering* without ostensible means of subsistence, or been living under *insanitary conditions* due to overcrowding; or (ii.) has entered the kingdom after August 11th, 1905, and has been sentenced in a foreign country for a non-political extradition crime within the Extradition Act, 1870;

Pp. 1135,
1136.
FORMS,
pp. 1135—
1137.

the Secretary of State may make an *expulsion order* requiring the alien to *leave the kingdom* within a time fixed, and thereafter to remain out of the kingdom (s. 3 (i.)).

If the *alien* is *found* at any time *within the kingdom* in contravention of the order, he commits an *offence* under the Act (s. 3 (ii.)). As to the *custody* of the alien pending expulsion, see *post*, p. 1138.

The *master of a ship* landing or embarking passengers is required to make a *return* of alien passengers in accordance with an order of December 19th, 1905, and,

Returns by masters of ships.

if he omits to do so or makes a false return, he is guilty of an *offence* under the Act (s. 5).

PENALTY for an offence under the Act.

PENALTY.—If the offender is the master of a ship, FINE not exceeding 100*l.*, recoverable by *distress* and, in default, imprisonment without hard labour according to scale (p. 111); if the offence is committed by the defendant as an immigrant or alien, he is liable to punishment as a ROGUE AND VAGABOND (*post*, p. 926).

Making false representations, or refusing information.

If false representations are made to immigration officers or the Secretary of State, or if an alien refuses information or gives false information to the master of a ship, the offender becomes liable to *three months' imprisonment* with hard labour (ss. 5, 7).

Onus of proof.

If any question arises as to whether a person is an alien, the *onus* of proving that he is *not an alien* lies on that person (s. 7 (v.)).

Liability of master when expulsion order made.

As to the liability of the master of a ship, for the expenses of deporting an alien landed without leave and expelled *within six months* after he has *been brought into the kingdom*, even when the alien arrived as a stowaway, see s. 4 (ii.), (iii.), and *Att.-Gen. v. Sutcliffe* (s).

ALKALI WORKS.

Alkali, &c., Act, 1906.

"The Alkali, &c., Works Regulation Act, 1906," makes provision for the *registration* and *conduct* of works for (a) the manufacture of sulphate of soda or sulphate of potash, or (b) the treatment of copper ores by common salt or other chlorides whereby any sulphate is formed, in which *muriatic acid gas is evolved* (see list in Schedule I.). The fines recoverable under the Act are for the most part recoverable by action in the county court (s. 17); but it is provided that—

Breach of special rules.

The owner of "an alkali work or of a scheduled work" may, with the sanction of the Local Government Board, make *special rules* for the guidance of workmen employed in connection with certain processes, and the violation of any such special rule is an *offence* punishable *summarily* (6 Edw. 7, c. 14, s. 15).

(s) [1907] 2 K. B. 997; 76 L. J. K. B. 991; 97 L. T. 373; 23 T. L. R. 711.

The PENALTY depends on the fine provided by the rule, but it cannot for any offence exceed 2*l*. It will be recoverable by *distress* and, in default, imprisonment *without* hard labour, according to scale (p. 111).

ANCHORS AND CHAIN CABLES ACT, 1899.

This statute creates a number of misdemeanours relating to the stamping, marking and testing of anchors and cables (see 62 & 63 Vict. c. 23, ss. 1, 13—16). No provision is made for the summary trial of any of these statutory offences.

ANIMALS, CRUELTY TO.

THE PREVENTION OF CRUELTY TO ANIMALS ACT

(12 & 13 Vict. c. 92).

- (a) Every person who cruelly *beats, ill-treats, over-drives, over-rides, abuses or tortures* any animal commits an offence. So, too, if he *causes or procures* any animal to be cruelly beaten, ill-treated, over-driven, over-ridden, abused or tortured (12 & 13 Vict. c. 92, ss. 2, 29).

Cruelly beating, ill-treating, &c., animals (a).
Form of Information, *post*, p. 1222.

PENALTY.—FINE not exceeding 5*l*.; and, in default of *payment*, imprisonment, with or without hard labour, according to scale (p. 111); or (if conviction takes place before *two* justices or a police or stipendiary magistrate), IMPRISONMENT, with or without hard labour, for not more than THREE MONTHS, in lieu of fine (*ib.* ss. 2, 18).

PENALTY.

After conviction for the offence, the defendant may be further proceeded against on a separate information, and ordered to make such COMPENSATION as shall be determined by the justices, but not exceeding 10*l*., in respect of any *damage or injury* to the animal, or in respect of any damage or injury done to any person or property by reason of the acts of cruelty (*ib.* s. 4). If the compensation be not paid, the offender may be imprisoned, with or without hard labour, according to scale (p. 111).

Compensation to owner or person injured.

A defendant guilty of "counselling" cruelty may be convicted although the information charge him as a

12 & 13 Vict.
c. 92.

Meaning
of word
"animal."

principal offender (*Benford v. Sims*) (t). In that case the defendant, a veterinary surgeon, had certified a horse as fit to work, but the animal proved to be unfit.

The word "animal" is defined to mean horse, mare, gelding, bull, ox, cow, heifer, steer, calf, mule, ass, sheep, lamb, hog, pig, sow, goat, dog, cat, or *any other domestic animal* (s. 29). And the expression "domestic animal" comprises every species of domestic animal, whether a quadruped or not (17 & 18 Vict. c. 60, s. 3). Thus it includes, *e.g.*, a fighting-cock, or a decoy-linnet; but a tame sea-gull kept by its owner in a field adjoining her residence and used by her in her business as a photographer was held "not sufficiently tamed to be a 'domestic animal'" (*Yates v. Higgins*) (u). The bird would go to the owner when called and feed from her hand, but the case was apparently distinguished from that of the decoy-linnets on the ground that the latter were "trained to perform a particular service." It has, too, been held that tamed lions which are kept in a cage are not *domestic* (*Harper v. Marcks*) (x); nor are wild rabbits kept for a few days before they are coursed (*Aplin v. Porritt*) (y). But as to wild animals in a state of *captivity*, see now 63 & 64 Vict. c. 33 (*post*, p. 254).

Guilty know-
ledge on part
of defendant
is essential.

The proceedings will fail unless there is some evidence of *guilty knowledge* on the part of the defendant. It is not sufficient to establish that he would have known of the animal's sufferings if he had been vigilant in the discharge of his duties. Mere carelessness will not bring the defendant within the operation of the statute: so that it would not, *e.g.*, be sufficient to sustain a conviction if it were simply proved that it was his duty as manager of a mine to take care that the horses employed in the mine were in a fit condition to be worked, and that one of them was being worked whilst in an unfit condition. There must be some evidence to show that he was aware of the cruelty which was being practised (*Small v.*

(t) *Ante*, p. 149; and see *ante*, p. 74.

(u) [1896] 1 Q. B. 166; 65 L. J. M. C. 31; 44 W. R. 335; 60 J. P. 88.

(x) [1894] 2 Q. B. 319; 63 L. J. M. C. 167; 70 L. T. 804; 58 J. P. 528.

(y) [1893] 2 Q. B. 57; 62 L. J. M. C. 144; 42 W. R. 95; 57 J. P. 457.

Warr (z); and cf. *Elliott v. Osborne* (a), *Greenwood v. Backhouse* (b).

But, in a recent case, it was held that there was some evidence of *mens rea* in the following circumstances:—During a public performance with lions in a cage, a pony was used to draw a roundabout containing lions. A lion jumped on to the pony and sniffed, whereupon it was driven back by the defendant (a lion tamer); but afterwards, when the defendant's attention was diverted, the lion attacked the pony and so injured it that it died. A similar performance had been given for years, and formerly several men with iron bars kept watch on the stage; but, for some time prior to the accident, watch had been kept by one man with a fire-hose (*Thielbar v. Craigen*) (c). Yet, it seems, that shooting at a trespassing dog, without intending to kill it but with the intention of injuring it and frightening it away, may or may not be "cruelty." It is a question of degree for justices to determine (*Armstrong v. Mitchell*) (d); and see *post*, p. 256.

Anyhow, the wilful causing of *unnecessary* suffering amounts to "cruelty," although the object of the acts constituting the offence be to destroy the animal and not to inflict pain (*Duncan v. Pope*) (e).

And a question frequently arises as to how far a man is responsible who permits an animal to remain in pain under particular circumstances. The mere omission to destroy a suffering animal which is in a dying condition is not cruelty within the section; but, if a man once begins to kill an animal, he is bound to kill it outright. Thus, in one case, the defendant on a Saturday tried to catch a pig; he chased it round a stable and with a carpenter's axe inflicted four wounds on its head. He then sent for a butcher, but one could not be found until Monday, the pig meanwhile lying bleeding from the wounds. The defendant was held to have been rightly convicted (*Adcock v. Murrell*) (f). In another case,

Passive
cruelty.

(z) (1882) 47 J. P. 20.

(a) (1891) 65 L. T. 378; 56 J. P. 38.

(b) (1902) 86 L. T. 566; 66 J. P. 519.

(c) (1905) 93 L. T. 600; 21 Cox, 44; 69 J. P. 421; 21 T. L. R.

745.

(d) (1903) 88 L. T. 870; 67 J. P. 329.

(e) (1899) 80 L. T. 120; 63 J. P. 217.

(f) (1890) 54 J. P. 776.

12 & 13 VICT.
C. 92.

where the defendant had shot a dog which was trespassing in his garden, and then left it to die in pain, he was held to have been improperly convicted. But, in that case, the defendant, after shooting the dog, at once gave information to its owner, and they both agreed that the dog was dead, though it appears that the defendant was afterwards informed that such was not the case (*Powell v. Knight*) (g). On the authority, apparently, of the case last cited, though in very different circumstances, a man who shot his neighbour's cat and saw it crawl away out of sight, wounded severely in the back, was held excused. About half an hour after the bullet struck the cat, it was found by the owner, alive but in great pain, and was then killed. It seems to have been decided that the man who fired the shot did not "allow" it to linger on in pain (*Hooker v. Gray*) (h).

Excuses for
cruel
operations.

The mere infliction of suffering for a necessary purpose is not "cruelty"; but, if an operation were performed which caused extreme pain without adequate and reasonable object, as, *e.g.*, the cropping of a dog's ears, this would be an unnecessary abuse of the animal, and would be within the section. "There is the greatest possible difficulty in adopting any precise definition of what should be held to come within these Acts, without at the same time interfering with cases in which a certain amount of pain is unavoidably inflicted in the course of the necessary operations of life" (per *Wright, J.*, in *Yates v. Higgins*) (i). It has been held that the dishorning of cattle by sawing off the horns at the roots is cruelty, and that the magistrates were wrong in dismissing an information in respect of this practice, although the object of the dishorning was to enhance the value of the animals by rendering them capable of being more conveniently packed for transit, &c. (*Ford v. Wiley*) (k). This decision has not been followed in the Scotch and Irish courts, apparently on the ground that the object of dishorning cattle is to prevent them from injuring one another, and is therefore beneficial to the cattle

(g) (1878) 38 L. T. 607; 42 J. P. 597; 26 W. R. 721.

(h) (1907) 96 L. T. 706; 71 J. P. 337; 23 T. L. R. 472.

(i) *Ante*, p. 248.

(k) (1889) 23 Q. B. D. 203; 58 L. J. M. C. 145; 53 J. P. 485.

themselves. In *Lewis v. Fermor* (l) it had been held that the operation of spaying sows (performed with the object of rendering the animals more fitted for use for the food of man) was not "cruelty"; but, in view of the decision in *Ford v. Wiley* (m), it is submitted that the earlier case should not be regarded as a binding authority. Cutting the combs of cocks—an admittedly painful operation—for the purpose of cock-fighting or fitting the birds to win prizes, was held to be cruelty within the section (*Murphy v. Manning*) (n). But branding sheep on the nose with a red-hot iron so as to burn away the hair and destroy the hair cells is not, it seems, "cruelty" if there are facts on which justices can and do find that this infliction of pain was "reasonably necessary for the purpose of identifying the sheep" (*Bowyer v. Morgan*) (o).

- (b) Everyone who keeps or uses, or permits to be kept or used, any room or place for *baiting or fighting* any bull, bear, badger, dog, cock or other kind of animal, domestic or wild, commits an offence. So, too, if he encourages or assists at any such fighting or baiting (12 & 13 Vict. c. 92, s. 3).

Keeping places for bull-baiting, cock-fighting, dog-fighting, &c. (b).

It was held that the coursing of rabbits with dogs in an inclosure was not "baiting" within this section (*Pitts v. Millar*) (p).

PENALTY.—FINE, not exceeding 5*l.* for every day on which the offence is committed, and, in default of *payment*, imprisonment, with or without hard labour, according to scale (p. 111). As to *peremptory* imprisonment, see s. 18.

- (c) Everyone who *impounds* an animal and *neglects to provide it with sufficient food and water* becomes liable to a penalty of 1*l.* (12 & 13 Vict. c. 92, s. 5); but this section applies to the person who impounds or causes to be impounded, not to the "pound-keeper," unless the latter becomes an "aider and

Offences relating to the impounding of animals (c).

(l) (1887) 18 Q. B. D. 532; 56 L. J. M. C. 45; 56 L. T. 236; 51 J. P. 371; 16 Cox, 176.

(m) *Ante*, p. 250.

(n) (1877) 2 Ex. D. 307; 46 L. J. M. C. 211; 36 L. T. 592; 25 W. R. 540; 41 J. P. 130.

(o) (1906) 95 L. T. 27; 22 T. L. R. 426; 70 J. P. 253.

(p) (1874) 9 Q. B. 380; 43 L. J. M. C. 173; 30 L. T. 328; 38 J. P. 615.

12 & 13 VICT.
c. 92.

abettor" (*Dargan v. Davies*) (q). If the animal is without sufficient food and water for twelve consecutive hours, anyone may supply the same and recover the cost as a penalty (s. 6). Indeed, a sum "not exceeding double the value" of the food and water, may be recovered from the owner; or, after seven clear days, the animal may be sold in open market (after three days' public printed notice) and the proceeds applied in discharge of the cost of the food and water and of the expenses incurred (17 & 18 Vict. c. 60, s. 1).

Cruelty in
conveyance
of animal (d).

- (d) Everyone commits an offence who *conveys* or carries or causes to be conveyed or carried in or upon any vehicle any animal in such manner or position as to subject it to *unnecessary pain or suffering* (12 & 13 Vict. c. 92, s. 12; and see *post*, p. 262).

PENALTY.—*First offence*—FINE, not exceeding 3*l.*, and, in default of *payment*, imprisonment with or without hard labour, according to scale (p. 111).

Second offence.—FINE, not exceeding 5*l.*, with like consequences on default. As to *peremptory* imprisonment see s. 18.

Proceedings
against
proprietor of
vehicle for
offence
committed by
his servant.

When a charge is preferred against the driver or conductor of any vehicle in respect of either of the offences (a) or (d), the magistrate may summon the proprietor of the vehicle to produce before him the man charged with the offence; and, if the proprietor fail to comply with this summons, the case may be heard in the absence of the defendant, and the proprietor may himself be adjudged to pay the penalty and costs in which the servant may be convicted. Instead of adopting this course, however, the proprietor may be summoned for not producing the driver or conductor, and may, in the absence of any satisfactory excuse, be fined 2*l.* (and in default of payment may be imprisoned, with or without hard labour, according to scale, p. 111) as often as he shall be summoned until he produces the driver (12 & 13 Vict. c. 92, s. 22).

Offences as to
slaughter-
houses (e).

- (e) There are provisions as to offences committed by persons engaged in the management of *licensed*

(q) (1877) 2 Q. B. D. 118; 46 L. J. M. C. 122; 35 L. T. 810; 41 J. P. 468.

slaughter-houses, providing penalties in respect of the following offences:—neglecting to affix name, &c., over door of building; neglecting to cut off the mane of a horse (or other cattle not intended for butcher's meat) immediately upon its being brought in; not killing it within three days; not feeding it properly in the meantime (12 & 13 Vict. c. 92, ss. 7, 8).

- (f) Everyone commits an offence who *obstructs* or assaults a *constable* or keeper of a pound whilst in the exercise of powers under the Act (12 & 13 Vict. c. 92, s. 20).

Obstructing constables acting under the Act (f).

PENALTY.—FINE, not exceeding 5*l.*, and, in default of *payment*, imprisonment, with or without hard labour, according to scale (p. 111).

As to the penalties for working or using horses or cattle sent in for slaughter, see *ib.* s. 9; and for not keeping or producing the identification book required to be kept, see *ib.* s. 10.

A constable upon his own view, or upon the information of any person who declares his name and abode, may apprehend an offender *without warrant* and convey him before a justice. The constable may, moreover, take any vehicle or animal (which the offender has charge of when taken into custody), and deposit it in safe custody as security for any penalty, and for the expenses of keeping the same; and the court, hearing the case, may order such vehicle or animal to be sold for the purpose of satisfying the penalty and reasonable expenses as though it had "been distrained for the payment of such penalty and expenses" (12 & 13 Vict. c. 92, ss. 13, 19).

Apprehension without warrant.

Seizure of any vehicle or animal in charge of offender.

The information must be laid within *one calendar month* (12 & 13 Vict. c. 92, s. 14). And see *Radcliffe v. Bartholomew* (r), from which it appears that, in computing the one calendar month, the day on which the offence was committed should be excluded, but the day on which the information is laid should be included. A *mandamus* was directed to issue where a magistrate had refused to grant a summons for an offence committed a fortnight previously on the ground that the driver should

Information to be laid within a month.

12 & 13 VICT.
C. 92.

have been arrested at the time and brought, with his horse, before the magistrate (*R. v. Paget*) (s). Where the information alleged that the defendants used a room for the fighting of two dogs, *and* encouraged, aided and assisted at such fighting (see *ante*, p. 251), objection being made that *two* offences were disclosed, it was held that, although the prosecutor might have been required to elect on which charge he would proceed, amendment had been wrongly refused: the refusal being based on the ground that the month for laying an information had already expired, and that it would be practically granting a new summons after the expiration of the limit imposed by statute (*Rodgers v. Richards* (t); and see *ante*, pp. 73—76).

Appeal.

APPEAL lies to Quarter Sessions where the amount ordered to be paid (exclusive of costs) exceeds 2*l.* or imprisonment is adjudged (s. 25; and *ante*, pp. 116, 154).

Penalties.

As to the application of the *penalties*, see s. 21; one moiety may be directed to be paid to the informer or such other person as to the court seems fit, the other moiety is paid in aid of the poor-rate. And cf. *ante*, p. 204.

Animals Act.
1907.

Under the Injured Animals Act, 1907 (7 Edw. 7, c. 5), a police constable may cause an animal to be slaughtered. If the owner is absent or refuses his consent to the slaughter, the constable must obtain the certificate of a duly registered veterinary surgeon to the effect that the animal is mortally injured, or so severely injured or so diseased or in such a condition that it is cruel to keep it alive. "Animal" means any horse, mule, ass, bull, cow, ox, heifer, calf, sheep, goat, or swine. The expenses incurred may be recovered from the *owner* summarily as a *civil debt* (*ante*, p. 118); otherwise, they will be defrayed out of the fund from which the expenses of the police are payable in the area in which the animal is found.

WILD ANIMALS IN CAPTIVITY.

Cruelty to
wild animals.

The Wild Animals in Captivity Protection Act, 1900, applies to animals whilst *in captivity or close confinement*, or when *maimed, pinioned, or subjected to any appliance*

(s) (1889) 53 J. P. 469.

(t) [1892] 1 Q. B. 555; 66 L. T. 261; 56 J. P. 281; 40 W. R. 331.

or contrivance for the *purpose of hindering* or preventing their *escape* (63 & 64 Vict. c. 33).

The word *animal* means any bird, beast, fish or reptile *not included* in the Acts of 1849 and 1854 (*ante*, p. 248).

Everyone commits an *offence* who, by *wantonly* or *unreasonably doing* or *omitting* any act,

(a) Causes (or permits to be caused) *unnecessary suffering* to such animal; or

(β) Cruelly *abuses*, *infuriates*, *teases* or *terrifies* it, or permits it to be so treated (*ib.* s. 2).

PENALTY.—IMPRISONMENT, with or without hard labour, for not more than THREE MONTHS; OR FINE, not exceeding 5*l.*, and, in default of *payment*, imprisonment, with or without hard labour, according to scale (p. 111). Penalty.

The statute does *not* apply to the destruction and preparation of animals as *food for mankind*, NOR to *vivisections* (*post*, p. 256), NOR to *hunting* or *coursing* an animal which has not been liberated in a *mutilated* or *injured* state to *facilitate its capture* or destruction (s. 4). Protection of
butchers,
vivisectioners,
sportsmen,
&c.

MALICIOUSLY MAIMING, ETC., ANIMALS

(24 & 25 Vict. c. 97).

It is an offence punishable on summary conviction *maliciously* to kill, maim, or wound any dog, bird, beast, or other animal *not being cattle* but being either the subject of larceny at common law, or being ordinarily kept in a state of confinement, or for any domestic purpose (24 & 25 Vict. c. 97, s. 41). Cf. *post*, pp. 658, 689. Killing,
maiming, or
wounding
animals.

The defendant must, before the case is proceeded with, be given the OPTION OF TRIAL BY JURY (*ante*, p. 63).

PENALTY.—FINE, not exceeding 20*l.* beyond the amount of the injury, and in default of *payment*, imprisonment, with or without hard labour, according to scale (p. 111); Penalty.

Or IMPRISONMENT, with or without hard labour, for not more than SIX MONTHS.

Second offence.—IMPRISONMENT, with or without hard labour, for not more than TWELVE MONTHS.

Where the like injury is done to *cattle*, the offence is a *felony*, and is not triable summarily (s. 40). Injuring
"cattle."

The charge under s. 41 may be heard by *one* justice; but the power to inflict punishment will, in that event, be

limited, *ante*, p. 12; and see further as to the procedure under this statute and as to appeal, *post*, pp. 690, 694.

Trespassing
dogs and cats.

It has been held that a conviction could not be sustained under this section where the defendant had set traps in a garden to catch trespassing dogs or cats (*Bryan v. Eaton*) (*u*), nor where he had shot trespassing hens (*Smith v. Williams*) (*x*). Nor where the defendant had placed poisoned meat in an *inclosed* garden for the purpose of killing a dog (*Daniel v. Janes*) (*y*). But it is an offence under 27 & 28 Vict. c. 115, to place poisoned meat elsewhere than in a building, or *inclosed* garden, or rick; or, even there, unless for the destruction of small vermin (*post*, p. 771). Compare also the case of *Armstrong v. Mitchell* (*z*). The extent to which the doctrine of *bona fides* may be carried in these cases was considered in that of *Miles v. Hutchings* (*a*). There a gamekeeper, finding a dog straying in the neighbourhood of an aviary where pheasants were placed for breeding purposes, proceeded to kill it, but "it was stated" on his behalf that he merely intended to drive it away. It was suggested by *Alverstone*, C.J., that the test was whether the man acted in the *bonâ fide* belief that what he was doing was *necessary* for the protection of his master's property. "It is not enough," said *Wills*, J., "that a man should be under the impression, right or wrong, that he is justified in protecting his premises from trespass or (as in the present case) his master's property from injury. If he knows that much less violent measures would attain his object, he is not justified in resorting to such means as killing or wounding the animal."

As to the meaning of "maliciously," see also *post*, p. 689.

VIVISECTION

(39 & 40 Vict. c. 77).

Offences connected with
vivisection.

The statute 39 & 40 Vict. c. 77, deals specially with Vivisection, and provides that it is an offence—

(a) To perform or take part in *performing* on a living

(*u*) (1876) 40 J. P. 213.

(*x*) (1892) 56 J. P. 840; 37 Sol. Jo. 11; 9 T. L. R. 9.

(*y*) (1877) 2 C. P. D. 351; 41 J. P. 712.

(*z*) Cited *ante*, p. 249.

(*a*) [1903] 2 K. B. 714; 89 L. T. 420; 72 L. J. K. B. 775; 52 W. R. 284; 20 Cox, 555.

animal, not being invertebrate, any experiment calculated to give pain, except under the conditions imposed by the Act (ss. 2, 22). The conditions imposed by the Act are set forth in s. 3; and s. 5 gives special protection from experiments (without anæsthetics) to dogs, cats, horses, asses, and mules, prohibiting certain experiments on them where other animals are available. The accused may claim to be tried by a jury (s. 15).

PENALTY.—FINE, not exceeding 50*l.*, and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111).

Second offence.—FINE, not exceeding 100*l.*, with a like remedy in default; OR IMPRISONMENT, *without* hard labour, for not more than THREE MONTHS.

- (b) To take any part in *an exhibition* of such experiments to the general public, whether on payment of money or gratuitously (s. 6). The accused may claim to be tried by a jury (s. 15). Exhibition of experiments.

PENALTY.—The same as in (a).

- (c) Publishing a notice of any such intended exhibition by advertisement in a newspaper, placard, or otherwise (s. 6). Advertising exhibition.

PENALTY.—FINE, not exceeding 1*l.*, and in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111).

- (d) Refusing admission, on demand, to a police officer with a *search warrant* (which may be granted under s. 13), or obstructing such officer in the execution of his duty, or refusing on demand to disclose name and address, or giving false name or address (s. 13). Obstructing execution of search-warrant.

PENALTY.—FINE, not exceeding 5*l.*, and, in default of *distress*, imprisonment *without* hard labour, according to scale (p. 111).

Proceedings against a *licensee* require the assent of the Secretary of State (s. 21). As to APPEAL to Quarter Sessions, see s. 16.

ADMINISTERING POISONOUS DRUGS, &c. TO ANIMALS

(39 Vict. c. 13).

Administering
poisonous
drugs to
animals.

It is an offence for any person (other than the owner or some one acting by his authority) *wilfully and unlawfully* to administer or cause to be administered to or taken by any horse, cattle or other domestic animal, any poisonous or injurious drug or substance, unless some reasonable cause or excuse is shown on his behalf (39 Vict. c. 13, ss. 1, 2).

PENALTY.—FINE, not exceeding 5*l.*, and, in default of *distress*, imprisonment *without* hard labour, according to scale (p. 111); or IMPRISONMENT, with or without hard labour, for not more than ONE MONTH.

Second offence.—IMPRISONMENT, with or without hard labour, for not more than THREE MONTHS.

ANIMALS, DISEASES OF.

DISEASES OF ANIMALS ACT, 1894 (57 & 58 VICT. c. 57).

The various Contagious Diseases (Animals) Acts are consolidated by the Diseases of Animals Act, 1894; and before dealing with the offences under the last-named Act, it will be necessary to indicate in outline some of its provisions.

We may premise by observing that the expression “local authority” means in boroughs (with a population of not less than 10,000, and, therefore, not within s. 39 of the Local Government Act, 1888), the “borough council”; in London, the “common council”; and elsewhere, the “county council”; that the expression “cattle” means bulls, cows, oxen, heifers, and calves; that the expression “animals” means cattle, sheep, goats, and all other ruminating animals, and swine; and that the expression “disease” means cattle plague, contagious pleuro-pneumonia, foot-and-mouth disease, sheep-pox, sheep-scab, or swine-fever (57 & 58 Vict. c. 57, ss. 3, 59).

Outline of the
Act of 1894.

The Act provides (*inter alia*) that:—

- (1) Persons in charge of diseased animals shall give notice of the fact, and keep them separate (s. 4).
- (2) The Board of Agriculture and Fisheries may declare

any cow-shed, field, or other place, to be a place infected with cattle plague (s. 5).

Infected places and areas.

(3) The board may declare any area containing the infected place to be an area infected with cattle plague (s. 6).

(4) The board or a local authority may declare any cow-shed, field, or other place, to be a *place infected* with pleuro-pneumonia or foot-and-mouth disease (s. 8). The board may also declare places to be infected with diseases other than cattle plague, pleuro-pneumonia, and foot-and-mouth disease (s. 10).

(5) The board may declare any area containing the infected place to be an *area infected* with pleuro-pneumonia or foot-and-mouth disease (s. 9).

(6) Cattle must *not be moved into, within, or out of a place or area infected* with pleuro-pneumonia or foot-and-mouth disease, except under prescribed conditions (s. 11).

(7) Persons in charge of animals in an *infected place or area* may by notice *exclude strangers* therefrom; and, thereupon, it shall not be lawful for any person, not having by law a right of entry or way, to enter the place or area (s. 13).

(8) The board may *direct the slaughter* of animals suffering or suspected to be suffering from disease, and pay compensation (ss. 7, 14 *et seq.*).

(9) The board may make *regulations* as to the exposure of such animals for sale, and as to their transit (s. 21).

(10) The board may make *orders* for the prevention or checking of disease generally; and, amongst many other specified matters, for prescribing and regulating the muzzling of dogs, and the keeping of dogs under control, and for the seizure and slaughter of stray or unmuzzled dogs, or of dogs not under proper control (s. 22; and see as to sheep scab, 3 Edw. 7, c. 43, s. 1). The Dogs Act, 1906 (s. 2), adds to these purposes: (a) the prescribing and the regulation of the wearing by *dogs* (whilst in a highway or place of public resort) of a *collar with the name and address of the owner* inscribed on the collar or on a plate or badge attached thereto; (β) the prevention of dogs *straying*

Power to require the muzzling of dogs.

Wearing of collars by dogs, &c.

between sunset and sunrise with a view to *preventing the worrying of cattle* (and see *post*, pp. 414—417). As to what is meant in an order by “holding a sale,” see *McLean v. Monk* (b).

- (11) Railway companies must provide water and food at their stations for animals in transit (s. 23).
- (12) The board may make *orders* prohibiting or regulating the importation of animals from abroad, and for regulating the movements of animals into, within, or out of defined ports (ss. 25 *et seq.*; see, too, 59 & 60 Vict. c. 15).
- (13) A local authority may *provide wharves, stations, lairs, &c., for the landing, sale, slaughter, &c., of foreign or other animals, carcasses, fodder, litter, dung, and other things*; and may make bye-laws in respect of such wharves, &c. (s. 32).
- (14) The *police* force of each police area shall *execute and enforce the Act*, and all orders of the board; and an inspector for the purposes of the Act may enter any land, shed, &c., where he suspects disease to exist, or in respect of which he suspects there has been any contravention of the Act, or of the orders of the board, or of the regulations of a local authority (ss. 43, 44).

Police to
execute Act.

Registration,
&c., of dairies.

Provision is made for the *registration, inspection, and regulation of dairies and cow-sheds* by 41 & 42 Vict. c. 74, s. 34 (see also 63 J. P. 170, and *post*, p. 578).

A requirement that there should be 800 cubic feet of air-space for each animal was held to be valid (*Baker v. Williams*) (c).

As to who is a “dairyman,” see *Umfreville v. London C. C.* (d).

OFFENCES.

Powers of
constables
enforcing the
Act.

A constable may, without warrant, stop and detain any person seen or found committing, or reasonably suspected of being engaged in committing, an offence against the Act. If the person's name and address are not known to the constable, and such person fails to give them to the satisfaction of the constable, the

(b) (1898) 77 L. T. 663; 62 J. P. 180.

(c) [1898] 1 Q. B. 23; 66 L. J. Q. B. 880.

(d) (1897) 61 J. P. 84.

constable may, without warrant, apprehend him (57 & 58 Vict. c. 57, s. 43 (ii.)). In any event, the constable may stop, detain, and examine any animal, vehicle, boat, or thing to which the offence or suspected offence relates, and require the same to be forthwith taken back to any place wherefrom it was unlawfully removed (s. 43 (ii.)). Again, the constable may, without warrant, apprehend any person who obstructs or impedes him in the execution of the Act (s. 43 (iii.)).

Apprehension
without
warrant.

The person so apprehended must be taken with all practicable speed before a justice, and must not be detained longer than is necessary for that purpose. "All enactments relating to the release of persons on recognizances taken by an officer of police or a constable," apply in the case of a person so apprehended (s. 43 (iv.); see *ante*, BAIL, p. 165; RECOGNIZANCES, p. 191).

The foregoing provisions respecting a constable apply equally to any person called by a constable to his assistance (s. 43 (v.)). The constable must forthwith make a report in writing to his superior officer setting forth the nature of his proceedings (s. 43 (vi.)).

Every person commits an OFFENCE when, *without lawful authority or excuse, proof whereof shall lie on him*, he does any of the following things (s. 52):—

General
offences.
s. 52.

- (a) If he does *anything in contravention of the Act*, or of an order of the Board of Agriculture, &c., or of a regulation of a local authority, as, *e.g.*, a regulation requiring dogs at large to be muzzled, or a regulation requiring sheep to be dipped in an approved dip (cf. *Bingley v. Quest (e)*).
- (b) If, where required by the Act or by an order of the board to *keep an animal separate* as far as practicable, or to *give notice of disease* with all practicable speed, he fails to do so.
- (c) If he fails to give, produce, observe, or do any notice, licence, rule, or thing which by the Act or by an order of the board, or by a regulation of a local authority he is required to give, produce, observe, or do.
- (d) If he does anything which is, by the Act or an order of the board, made or declared to be *not lawful*;

(e) *Ante*, pp. 73, 99.

General
offences.
s. 52.

as, *e.g.*, if a stranger were to enter a place in an infected area after the affixing of a notice under s. 13 excluding strangers therefrom.

- (e) If he *does or omits anything*, the doing or omission whereof is *declared* by the Act or by an order of the board *to be an offence* by him against the Act. Thus, *e.g.*, if the consignor or person in charge of an animal in course of transit by rail does not request the railway company to provide water so that the animal remains without a supply of water for twenty-four consecutive hours (or such other period not less than twelve hours as the board may prescribe), the consignor and the person in charge of the animal are each guilty of an offence (s. 23); and it lies upon the person charged to prove the request, and the time within which the animal had a supply of water.

Omitting to
supply water
to animal
travelling
by rail.

Refusing
admission to
or impeding
officer.

- (f) If he *refuses to an inspector* or other officer acting in the execution of the Act, or of an order of the board, or of a regulation of a local authority, *admission to any land, &c.*, which the inspector or officer is entitled to enter or examine; or if he in any way obstructs or impedes such an officer.

Throwing
diseased car-
case into
stream.

- (g) If he *throws* or places, or causes or suffers to be thrown or placed, into or in any *river*, stream, canal, navigation, or other water, or into or in the sea within three miles of the shore, the *carcase* of an animal which has died of disease, or been slaughtered as diseased or suspected.

Penalty in
respect of
offences
(a)—(g).

PENALTY, in respect of any of the offences (a), (b), (c), (d), (e), (f), or (g), FINE, not exceeding 20*l.* If the offence is with respect to more than *four* animals, the fine must not exceed 5*l.* for each animal. Where the offence is in relation to carcases, fodder, litter, dung, or other thing (exclusive of animals), in addition to the first fine of not exceeding 20*l.*, there may be imposed a fine of not exceeding 10*l.* in respect of every half-ton in weight after one half-ton (s. 51).

In default of *distress*, imprisonment *without hard labour* may be imposed according to scale (p. 111; s. 54).

On a *second or subsequent* conviction *within twelve months* under the same sub-section of s. 52, the offender may, in

lieu of the fine, be imprisoned for not exceeding *one month*, with or without hard labour (s. 52).

Every person commits an OFFENCE who does any of the following things (s. 53).

Offences as to
licences, cer-
tificates, &c.
s. 53.

- (h) If, *without having obtained a licence*, he does anything for which a licence is requisite, *with intent "to unlawfully evade"* the Act, or an order of the board, or a regulation of a local authority.
- (i) If, where a licence is requisite, and having obtained a licence, he, *with the like intent*, does the thing licensed *after the licence has expired*.
- (j) If he uses or attempts to use as a licence an instrument which is *incomplete*, or untruly purports to be a licence, unless he satisfies the court that he did not know, and could not with reasonable diligence have obtained knowledge of the incompleteness or falsity.
- (k) If, with the intent of unlawful evasion, he *alters, counterfeits, &c.*, or utters, knowing the same to be altered, counterfeited, &c., a licence, declaration, certificate, or instrument issued under the Act, or an order of the board, or a regulation of a local authority.
- (l) If he makes a *false declaration* or statement *for the purpose of obtaining a licence*, certificate or instrument, or endeavours to obtain the same by means of a false pretence, unless he satisfies the court that he did not know, and could not with reasonable diligence have obtained knowledge of the falsity.
- (m) If he knowingly issues a licence, &c., *without authority*; or issues a licence, &c., *false in date or other material particular*, unless he satisfies the court that he did not know, and could not with reasonable diligence have obtained knowledge of the falsity.
- (n) If, with the intent of unlawful evasion, he issues an instrument for permitting or regulating the movement of a *particular animal*, or the doing of any other *particular thing*, when the instrument was, in fact, issued *in blank*; or, if he attempts to make use of such an instrument, unless he satisfies the court that he did not know, and could not with reasonable diligence have knowledge of it having been issued in blank.

Obtaining compensation by fraud.

(o) If, by means of any *fraud or false pretence*, he obtains, or attempts to obtain, *compensation* from the board, or a local authority, in respect of an animal slaughtered; or aids or abets any person in any such fraud or false pretence.

Unlawfully digging up carcasses.

(p) If, without lawful authority or excuse, proof whereof shall lie on him, he *digs up*, or causes to be dug up, a *carcase* buried under the direction of the board or a local authority, or of a receiver of wreck.

Unlawfully using prohibited vessels, pens, &c.

(q) If, where the board has by order prohibited, absolutely or conditionally, the use for the carrying of animals, or for any purpose connected therewith, of a vessel, vehicle, or pen, or other place, he, without lawful authority or excuse, proof whereof shall lie on him, does anything so prohibited.

Penalty in respect of offences (h)—(q).

PENALTY.—In respect of the offences (h), (i), (j), (k), (l), (m), (n), (o), (p), or (q), a FINE may be imposed as in respect of offences (a) to (g); or, the offender may be IMPRISONED for not exceeding TWO MONTHS, with or without hard labour.

PROCEDURE.

Information.

The right to prefer an information under the Act is not confined to the local authority, but may be exercised by any private person who becomes aware of the offence (*R. v. Stewart*) (f).

Venue.

Every offence against the Act, and every cause of complaint or matter for summary proceeding, is deemed to have arisen *either* in the place where the same *actually was committed* or arose, or in any place where the person charged, or complained of, or proceeded against, *happens to be* at the time of the institution of proceedings (s. 57 (iv.); cf. *ante*, p. 11).

Presumption as to knowledge of disease.

Where the offence is relative to *disease* or to any illness of an animal, the owner or person in charge is *presumed* to have known of the *existence of the disease* or illness, unless he can satisfy the court that he had not and could not with reasonable diligence have obtained such knowledge (s. 57 (i.)).

Presumption as to cleansing and disinfecting.

So, too, if the defendant is charged with not having

(f) [1896] 1 Q. B. 300; 44 W. R. 368; 60 J. P. 356.

duly cleansed or disinfected any place, vessel, vehicle, or thing belonging to him or under his charge, and "a presumption against him on the part of the prosecution is raised," it lies on him to prove the due cleansing and disinfection (s. 57 (ii.)).

An order or regulation of a *local authority* may be proved by the production of a newspaper purporting to contain the order or regulation as an advertisement; *or*, by the production of a copy of the order or regulation purporting to be certified by the clerk of the local authority as a true copy. And an order or regulation so proved must be taken to have been duly made until the contrary is proved (s. 37). Orders and regulations of the *Board of Agriculture, &c.*, may be proved, under 58 & 59 Vict. c. 9, by the production of the *Gazette* or of a Government Printers' copy (cf. *post*, p. 357).

Proof of order or regulation of a local authority, or of the Board of Agriculture.

A certificate of a veterinary inspector (*i.e.*, an inspector who is a member of the Royal College of Veterinary Surgeons, or any veterinary practitioner qualified as approved by the board) to the effect that an animal is or was affected with a specified disease is to be taken as *conclusive* evidence of the matter certified (s. 44 (v.)). And no proof can be required of the appointment or handwriting of an inspector or other officer of the board, or of the clerk or inspector or other officer of a local authority (s. 48 (i.)).

Effect of certificate of a veterinary inspector.

As to the proof of *service* of notices, &c., under the Act, see s. 48; and as to the application of penalties, see s. 57 (v.), which enables the court (except in proceedings under the Customs Acts) to direct a part, not exceeding *one half*, of the fine or forfeiture to be paid to the informant. As to the disposition of the residue, see 11 & 12 Vict. c. 43, s. 31 (*ante*, pp. 193, 204, and *post*, p. 1015).

Penalties.

Any person, who thinks himself aggrieved by the *dismissal* of a complaint by, *or* by *any determination* or adjudication of, a court of summary jurisdiction under the Act, may APPEAL therefrom to quarter sessions (s. 55).

Appeal to quarter sessions.

APPRENTICES.

The Employers and Workmen Act, 1875, enacts that disputes incidental to the relationship of master and

In what cases justices have

jurisdiction to settle disputes, &c. apprentice may be determined by a court of summary jurisdiction. Apprentices, however, to come within the Act, must be apprenticed either under the Poor Relief Acts, or to [learn] the business of a *workman*.

The statute runs "an apprentice to the business of a workman," but the precise meaning of the phrase is not clear.

"Workman" is defined as including "any person who, being a labourer, servant in husbandry, journeyman, artificer, handicraftsman, miner, or *otherwise engaged in manual labour*, has entered into or works under a contract with an employer." Justices cannot, therefore, entertain the dispute if the master is a grocer, a haberdasher, &c.; inasmuch as the apprentice to come within the Act must be one who is bound to learn a trade which involves his employment in manual labour *ejusdem generis* with that of a "workman" as already defined. Moreover, *the Act does not apply in any case where a premium exceeding 25l. has been paid* (38 & 39 Vict. c. 90, s. 12).

The Act also applies to seamen and apprentices to the sea service (43 & 44 Vict. c. 16, s. 11).

Power of justices in settlement of disputes, &c.

The court has the same powers as if the dispute were between an employer and his workman, and the instrument of apprenticeship were a contract between the employer and the workman: that is to say, the court may, *where the claim does not exceed 10l.*,

Forms,
p. 1132.

Cf. : *post*,
p. 443.

(i.) Order payment of wages, damages, &c., not exceeding 10l., exclusive of costs.

(ii.) Adjust and set off all claims and counter claims arising out of the contract within the limit of 10l.

(iii.) Rescind the contract on just terms.

And the court has further power—

(iv.) To direct the apprentice to perform his contract.

(v.) To order, in the event of the indentures being rescinded, that the whole or any part of the premium be returned.

(vi.) To summon any person liable under the indentures as surety for the good conduct of the apprentice, and to order such person to pay damages in respect of any breach of contract by the apprentice to an amount not exceeding the limit (if any) to which such person is liable under the indentures.

(vii.) To accept security from the person so summoned or from any other person instead of or in mitigation of any punishment which might be inflicted (38 & 39 Vict. c. 90, ss. 6, 7).

If an order has been made directing the apprentice to perform his duties, the court may, from time to time, if satisfied, after the expiration of not less than one month from the date of the order, that the apprentice has failed to comply therewith, cause him to be *imprisoned* for a term not exceeding fourteen days without hard labour (38 & 39 Vict. c. 90, s. 6).

Power to imprison for disobedience of order to perform contract.

It is, however, specially provided that no order of commitment shall be made against an apprentice until he has been *personally* served with a judgment summons (rules of 1886, under Employers and Workmen Act, 1875, r. 2, Appendix, p. 1131).

P. 1131.

AN APPEAL will, of course, lie to quarter sessions if the apprentice is committed to prison for disobeying the order to perform his duties (42 & 43 Vict. c. 49, s. 19).

P. 1034.

The procedure will be regulated by the Employers and Workmen Act, 1875, and the rules of 1886 framed under that Act (see EMPLOYERS AND WORKMEN, *post*, p. 443).

Procedure.

The jurisdiction of the court as to disputes being a civil jurisdiction, the defendant is, as we have seen, not only a competent, but also a *compellable*, witness (*ante*, p. 170).

Proceedings must be commenced by *summons*, and not by warrant; and, where the proceeding is simply for the recovery of money, no warrant can issue even if the apprentice fail to appear in answer to the summons. The summons must be served four clear days at least before the hearing in the manner prescribed by r. 2 (Appendix, p. 1130).

P. 1130.

Payment of any damages, &c., may be enforced by *distress* after previous service of the order; but the defendant cannot be *committed* for non-payment until after process by service of a *judgment summons*. There is a special scale of costs provided by the rules of 1886 (Appendix, p. 1134).

P. 1134.

The master of any apprentice in the United Kingdom (who was bound to him by a regular indenture for at least

Claiming apprentices

who have
enlisted.

four years, and was under sixteen when bound, and who has been attested as a soldier of the regular forces) may claim him, under certain circumstances, whilst under the age of twenty-one, but not afterwards. The master must, within one month after the apprentice left his service, swear a declaration before a justice of the peace as to the absconding of the apprentice (see forms in schedule); and he may afterwards apply by way of complaint to any court of summary jurisdiction within whose jurisdiction the apprentice may be; while the court, if of opinion that the apprentice ought to be given up, may order his commanding officer to deliver him to his master. But the court, if satisfied that the apprentice stated upon his attestation that he was not an apprentice, may (and, if required by the commanding officer, must) cause him to be summoned and tried for the false statement, and if necessary adjourn for that purpose ("Army Act," s. 96). The clause is extended to militia recruits by the Militia Act, 1882 (45 & 46 Vict. c. 49, s. 9); and to recruits in the Territorial Force by 7 Edw. 7, c. 9, s. 10. The commanding officer should be summoned to attend the court before any order is made upon him. For the necessary forms, see "Army Act" (First Schedule).

Cf. *post*,
p. 722.

Powers of
justices as to
poor law
apprentices.

The consent of two justices was formerly obtained where the churchwardens and overseers bound a poor child as an apprentice.

But now, in unions, the power of binding is transferred to the guardians, who do not require the assent of justices (7 & 8 Vict. c. 101, s. 12).

Unless a sum greater than 5*l.* was paid on the binding of a parish apprentice, a levy on the master's goods for the maintenance of the apprentice may be authorized by two justices; or, in case the master is unable to maintain the apprentice, the justices may discharge the latter. They have, too, power to authorize the assignment of the apprentice, or, on the death of the master, to order him to serve one of certain specified persons (32 Geo. 3, c. 57, ss. 2, 4, 6, 7, 8, 9).

If the master should remove, beyond certain prescribed limits, from the place where the apprentice was bound, two justices may discharge the apprentice or assign him to some new master (56 Geo. 3, c. 139, s. 8).

The following offences have relation to poor law apprentices—

Offences relating to poor law apprentices.

- (a) Master removing beyond prescribed limits, or wilfully abandoning the apprentice, without notice. PENALTY, 10*l*.

The information must be laid within three months.

- (b) Overseers binding, or any person receiving, the apprentice without the consent of justices. PENALTY, 10*l*.

- (c) Transferring or discharging the apprentice without the consent of justices. PENALTY, 10*l*.

- (d) Master wilfully refusing or neglecting to perform conditions inserted in the indentures by order of the poor law board (see CONSOLIDATED GENERAL ORDER, July 24th, 1847). PENALTY, 20*l*.; recoverable by distress, and in default, imprisonment *without* hard labour according to scale (p. 111; 56 Geo. 3, c. 139, ss. 6, 8, 10; 7 & 8 Vict. c. 101, s. 12).

Any master, who is legally liable to provide for his servant or apprentice any food or clothing or medical aid or lodging, commits an offence if he *wilfully and without lawful excuse* refuses or neglects to provide the same, whereby the health of the servant or apprentice is likely to be seriously or permanently injured (38 & 39 Vict. c. 86, ss. 6, 10); see also *post*, pp. 371, 708.

Neglecting to provide an apprentice with food, &c.

Before the hearing proceeds, the accused must be given the OPTION OF TRIAL BY JURY (see *ante*, p. 63).

Appeal lies to quarter sessions (s. 12).

PENALTY.—FINE, not exceeding 20*l*., and, in default of *distress*, imprisonment *without* hard labour according to scale (p. 111); or IMPRISONMENT for not more than SIX MONTHS with or without hard labour.

The contract involved in the indentures of apprenticeship is a *personal* contract; and, in the absence of express words indicating a contrary intention, it is, therefore, determined by the death of either party thereto (*Farrow v. Wilson*) (*g*). But the contract may be entered into with a limited company (*Burnley Equitable, &c., Society v. Casson*) (*h*). The contract cannot be enforced if the

Note on the contract of apprenticeship.

(*g*) (1869) L. R. 4 C. P. 744; 38 L. J. C. P. 326; 20 L. T. 810.

(*h*) [1891] 1 Q. B. 75; 60 L. J. M. C. 59; 39 W. R. 124; 55 J. P. 166.

The contract
of appren-
ticeship.

indentures contain unusual provisions which are unreasonable and not for the benefit of the infant, as, *e.g.*, a provision that wages shall not be paid during a lock-out (cf. *Meakin v. Morris* (i); *Francesco v. Barnum* (j); *Corn v. Mathew* (k). But the indenture may, it seems, suspend payment of wages for days on which the works are stopped "through accident *beyond the control of the master*" (*Green v. Thompson*) (l). If the master remove his business to a place at an unreasonable distance from that at which it was being carried on at the date of the contract, the apprentice cannot be compelled to continue his service (*Eaton v. Western*) (m). In the absence of express stipulation, an apprentice is entitled to receive wages during a temporary absence occasioned by illness (*Patten v. Wood*) (n). An apprentice cannot, as a rule, be *dismissed* for neglect of duties or misconduct; action must be taken on the covenants in the indentures. But there may be an express agreement entitling the master to dismissal on such a ground, as in *Westwick v. Theodor* (o). And the misconduct may be so gross as to render it impossible to continue the service, as in *Learoyd v. Brook* (p). The apprentice may avoid the contract on his coming of age; and see, further, Austin on "Apprentices."

Bankruptcy
of master.

As to the effect of the master's *bankruptcy*, see 46 & 47 Vict. c. 52, s. 41, whereby it is provided that, upon notice in writing being given to the trustee, the bankruptcy shall operate as a complete discharge of the indenture.

As to apprentices to the *sea service*, see Merchant Shipping Act, 1894, ss. 108, 109, &c.

(i) (1884) 12 Q. B. D. 352; 53 L. J. M. C. 72; 48 J. P. 292, 344.

(j) (1891) 60 L. J. Ch. 63; 63 L. T. 438.

(k) [1893] 1 Q. B. 310; 62 L. J. M. C. 61; 68 L. T. 480.

(l) [1899] 2 Q. B. 1; 68 L. J. Q. B. 719; 80 L. T. 691; 63 J. P. 486.

(m) (1883) 9 Q. B. D. 636; 52 L. J. Q. B. 41; 47 L. T. 192; 47 J. P. 196.

(n) (1887) 51 J. P. 549.

(o) (1875) 10 Q. B. 224; 44 L. J. Q. B. 110; 32 L. T. 696; 23 W. R. 620.

(p) [1891] 1 Q. B. 431; 60 L. J. Q. B. 373; 64 L. T. 478; 55 J. P. 265.

ARSON.

Arson is the crime of "unlawfully and maliciously" setting fire to property, and the law will infer malice from the perpetration of a wilful or wanton act of mischief. It is not necessary either to charge in the indictment, or to prove at the trial, an intent to injure or defraud any person *in particular* (24 & 25 Vict. c. 97, s. 60).

Nature of
crime of
arson.

Evidence tending to show that the accused had caused previous fires might be admissible on the issue whether the fire in question was designed or accidental; as, *e.g.*, if the accused were charged in respect of a fire which had broken out in his own premises, and it could be shown that fires had broken out in other houses occupied by him, and that he had made claims upon insurance companies in respect of the loss (*R. v. Gray* (q); *Makin v. Att.-Gen. for New South Wales* (r)).

The unlawful and malicious setting on fire of different classes of property is provided against by the last cited statute, and none of the offences is triable summarily (except the setting fire to any part of any wood, coppice, or plantation of trees, or to any heath, gorse, furze, or fern, see *ante*, p. 134, and offence (i), *post*, p. 273), unless, indeed, the accused be under sixteen years of age.

The maximum punishment on indictment in respect of each offence is some term of penal servitude, and, in addition, whipping may be ordered when the person convicted is a male under sixteen years of age. The offences are all felonies, and *none* of them is triable at *quarter sessions* except offences (f), (g), (h), (k), (m), and (p).

(a) Church, chapel, meeting-house, or other place of divine worship. [Penal servitude—life.] (S. 1.)

Setting fire to
churches, &c.

A vestry opening into a church comes within this section (*R. v. Evans*) (s).

(b) A dwelling-house *if any person is therein*. [Life.] (S. 2; cf. *R. v. Pardoe* (t), in which case it was held

Dwelling-
houses, and
other build-
ings: offences
(b)—(f).

(q) (1866) 4 F. & F. 1102.

(r) [1894] A. C. 57; 63 L. J. P. C. 41; 69 L. T. 778; 58 J. P.

148.

(s) (1842) C. & M. 298.

(t) (1894) 17 Cox, 715.

that the "person" might be the prisoner himself, *sed quære.*)

- (c) House, stable, out-house, warehouse, office, shop, mill, barn, shed, &c., building used for farming purposes, or in carrying on any trade, manufacture, &c. (whether in the possession of the accused or of any other person), with intent thereby to injure or defraud any person. [Life.] (24 & 25 Vict.c. 97, s. 3.)

An unfinished building is not within this section (*R. v. Edgehill (u)*); but see offence (f)).

- (d) Railway station, engine-house, warehouse, or other building belonging or appertaining to any railway, port, dock, or harbour, or to any canal or other navigation. [Life.] (S. 4.)

- (e) Public building of every description, including colleges, &c., devoted to public use or ornament, or erected or maintained by public subscription or contribution. [Life.] (S. 5.)

- (f) Any building other than such as are before mentioned. [Fourteen years.] (S. 6.)

An unfinished building is within this section (*R. v. Manning (v)*).

Things in,
against or
under a
building.

- (g) Any matter or thing in, against, or under any building under such circumstances that if the building took fire the offence would amount to felony. [Fourteen years.] (S. 7.)

As to setting fire to goods in buildings, see *R. v. Child (x)*; and see *R. v. Natrass (y)* and *R. v. Harris (z)*.

It is not sufficient to show that the prisoner set fire to the goods with the intention of injuring their owner, unless the circumstances show that the prisoner knew he would probably cause the building to take fire and was reckless whether he did so or not.

- (h) Attempting, by any overt act, to set fire to any building, or attempting to commit offence (g). [Fourteen years.] (S. 8.)

Crops, woods,
heath, &c.

- (i) Crop of hay, grass, corn, or pulse, or any cultivated vegetable produce, whether standing or cut;

(u) (1868) 32 J. P. 168.

(v) (1872) L. R. 1 C. C. R. 338; 25 L. T. 573.

(x) (1871) L. R. 1 C. C. R. 307; 24 L. T. 556.

(y) (1882) 15 Cox, 73.

(z) (1882) 15 Cox, 75.

or any part of any wood, coppice, or plantation; or any heath, gorse, furze, or fern wheresoever growing. [Fourteen years.] (S. 16.) Triable, as to corn or pulse, at assizes only (see p. 271); but the setting fire to a wood, &c., or to heath, &c., is, under certain conditions, now triable summarily (*ante*, pp. 134—136).

ARSON :—
contd.

(j) Stack of corn, grain, hay, straw, &c., or of any cultivated vegetable produce, or of furze, turf, coal, charcoal, wood, bark, &c. [Life.] (S. 17.)

Stacks of
corn, furze,
wood, &c.

Setting fire to straw on a lorry is not within this section (*R. v. Satchwell*) (a).

(k) Attempting, by any overt act, to commit offences (i) or (j). [Seven years.] (S. 18.)

(l) Mine of coal, cannel coal, anthracite or other mineral fuel. [Life.] (S. 26.)

Mines of coal,
anthracite,
&c.

(m) Attempting, by any overt act, to set fire to a mine under such circumstances that, if the mine were thereby set on fire, the offender would be guilty of felony. [Fourteen years.] (S. 27.)

(n) Any ship or vessel, whether complete or unfinished ("set fire to, cast away, or in anywise destroy"). [Life.] (S. 42.)

Ships.

(o) Any ship or vessel with intent to prejudice a person interested in the ship or cargo. [Life.] (S. 43.)

(p) Attempting, by any overt act, to commit offence (n). [Fourteen years.] (S. 44.)

By 12 Geo. 3, c. 24, it is a felony triable at assizes only, and punishable with *death*, to set on fire any of H.M. vessels of war, arsenals, magazines, dockyards, or victualling stores.

ASSAULT.

The term "assault" is generally used to signify any act of personal molestation cognizable by law. Mere words, however insulting or provocative, cannot amount to an assault unless accompanied by some offer of personal violence. Strictly speaking, an "assault," as distinguished from a "battery," is an *attempt or offer*, with force and violence, to do a corporal injury to another, as

Meaning of
the terms
"assault" and
"battery."

(a) (1873) L. R. 2 C. C. R. 21; 42 L. J. M. C. 63; 28 L. T. 569.

Definition of
assault.

by presenting a gun at a person who is within the distance to which the gun will carry; or striking at another with a stick, although the striker misses his aim; or even by holding up the fist in a menacing manner. The mere shaking of one's fist at a man, who is so far off that he could not possibly be reached by a blow, would not constitute an assault; but the violence threatened may, nevertheless, amount to an assault although the offender *be stopped* before he is sufficiently near to execute completely his intention. Thus, if a man be advancing in a threatening attitude (as, for instance, with his fists clenched) to strike another, so that his blow would almost immediately have reached the object of his attack, and he be then stopped, it is an assault in law, if his intent were to strike such person, though he was not near enough at the time to have struck him (*Stevens v. Myers*) (b). If any *actual bodily injury*, however slight, is done to a person in an angry, rude, or insolent manner, as by striking him, or spitting upon him, or even if force be applied to the dress worn by him, it is something more than an "assault," and is termed a "battery"; every battery thus includes an assault. but, as we have observed, the word "assault" is usually employed in a more comprehensive sense. Using the term in this broader sense, it was held to be an assault to ride after a man in such fashion that he was compelled to escape into a garden in order to avoid being beaten (*Martin v. Shoppee*) (c); or, again, to strike the horse upon which a man was riding so as to cause him bodily injury (*Wemyss v. Hopkins*) (d). So, too, every unlawful imprisonment is an assault; and as to the circumstances in which the detention of a child at school for neglect to learn lessons may amount to an assault, see *R. v. Watson* (e), and *Hunter v. Johnson* (f).

Injury must
be *intentional*.

It is, however, in all cases necessary to constitute the offence that the acts complained of should have been *intentional*; thus, it is no assault to shoot another by a pure accident (*Weaver v. Ward*) (g), nor is it an assault if

(b) (1830) 4 C. & P. 349.

(c) (1828) 3 C. & P. 373.

(d) (1875) L. R. 10 Q. B. 378; 44 L. J. M. C. 101.

(e) (1884) 48 J. P. 149.

(f) (1884) 13 Q. B. D. 225; 53 L. J. M. C. 182; 48 J. P. 663.

(g) (1617) Hob. 134.

a horse run away with his rider and knock a man down (*Gibbons v. Pepper*) (*h*), nor if one merely lay hands on another for the purpose of attracting his attention (*Coward v. Baddeley*) (*i*), nor if the injury be done, without hostile intention, in the course of some lawful game such as cricket or football.

The unlawful act constituting the assault must, too (in the absence of express statutory provision), be done *without the consent* of the party complaining; but the omission to dissent will not in all cases afford an answer to the charge. Thus, if the complainant were unconscious of the true nature of the act, and so made no resistance, as might be the case if a child or imbecile person were treated indecently, the offence would nevertheless be complete (*R. v. Lock* (*k*); *R. v. Flattery*) (*l*).

And must be *without the consent* of the injured person.

So, too, even if the party assaulted appreciates and submits to the acts complained of, such submission would afford no answer to the charge if it were obtained under the influence of fear or by means of fraud, as would be the case if a woman were induced to submit to a surgical examination of her person by means of a false and fraudulent representation that such examination was necessary for medical purposes. As to the inability of children under thirteen to consent to *indecent* assaults, see *post*, p. 287.

Unless consent is obtained by fraud.

Moreover, if the acts complained of involve a breach of the peace, as where persons are engaged in a prize-fight, the acts are illegal and constitute an assault notwithstanding the circumstance that the persons have themselves consented to the injuries inflicted. It has been said that "the consent of each party in a prize-fight does not legalize the battery though it negatives the mere assault" (1 Den. C. C. 380, n.). And not only are the principals in the fight guilty of assault, but also those who aid and abet them (*R. v. Coney*) (*m*).

Or unless there is a breach of the peace, *e.g.*, prize-fight.

In some cases it is possible to *justify* the using of force against the person of another, and the acts complained

Defence of justification for employment of force.

(*h*) (1696) 4 Mod. Rep. 405.

(*i*) (1859) 4 H. & N. 478; 28 L. J. Ex. 260.

(*k*) (1873) L. R. 2 C. C. R. 10; 42 L. J. M. C. 5; 27 L. T. 661.

(*l*) (1877) 2 Q. B. D. 410; 46 L. J. M. C. 130; 25 W. R. 398.

(*m*) (1882) 8 Q. B. D. 534; 51 L. J. M. C. 66; 46 L. T. 307; 46 J. P. 404.

of will not then constitute an assault and battery. Thus, a peace officer in effecting an arrest, a parent in chastising his child, a schoolmaster in correcting a scholar (even for misconduct out of school: *Cleary v. Booth* (n)), may justify the use of so much violence as is necessary to accomplish the purpose proposed. It has, indeed, been held (by *Phillimore* and *Walton*, JJ.) that the ordinary authority to inflict corporal punishment extends not to the head teacher only, but to the responsible teachers who have charge of classes; and, that regulations forbidding assistant teachers to inflict such chastisement—at any rate, if the regulations be unknown to the parent—do not “qualify or limit the ordinary authority as to the administering of corporal punishment *which a parent must be supposed to give to the school authorities when he sends the child to school*”

Self-defence.

(*Mansell v. Griffin*) (o). So, too, a man in self-defence or in defence of his wife, parent, child, master, or property, or to prevent a breach of the peace or a felony, may justify the employment of force. It is, moreover, to be observed, that, if A aims a blow at B and misses him, B is not limited to warding off the blow, but may be justified in striking A if it be reasonably necessary for self-defence (*R. v. Deana*) (oa). Again, a trespasser, after he has been requested to leave, and has neglected or refused to comply with the request, may be ejected by force; but it is essential in all these cases to remember that no more violence must be used than is absolutely necessary. An excess of violence cannot in any case be justified, and the person guilty of such excess may be punished as for an assault wholly unjustified. It may be remarked that, although a peace officer may justify the use of violence to effect an arrest, he must proceed strictly in accordance with the law; and it has been held that, where a constable had not the warrant authorizing the arrest in his possession at the time, the man sought to be arrested was justified in resisting the officer with violence: cf.: *post*, p. 286. Mere words should not be resented by blows, yet it is not, in

But there must be no excess of force employed.

(n) [1893] 1 Q. B. 465; 62 L. J. M. C. 87; 57 J. P. 375.

(o) [1908] 1 K. B. 160; 72 J. P. 6. (In C. A. [1908] 1 K. B. 947).

(oa) (1909) 25 T. L. R. 399; 73 J. P. 255.

all cases, necessary that a man threatened with violence should delay to strike until he himself is actually struck.

The jurisdiction of magistrates as to charges of assault is ousted where there arises any question as to the *title to lands*, tenements, or hereditaments, or *any interest therein* or accruing therefrom, or, as to any *bankruptcy*, or any *execution* under the process of a court (24 & 25 Vict. c. 100, s. 46; Chap. III., p. 91). The justices cannot assume to deal with the case when any such question is *bonâ fide* raised before them, on the ground that, in any event, there was an excess of violence (*ante*, p. 91). Their proper course, under such circumstances, would be to commit the accused to be tried on *indictment* for assault, which is a common law misdemeanour. In order to oust the jurisdiction of the magistrates, the charge of assault must, of course, be directly connected with the claim of right; and the claim must involve a decision as to the *title* to land or to an interest therein. It must not, *e.g.*, be a mere claim to trespass on land in pursuit of a fox or other vermin (*Paul v. Summerhayes*) (*p*); nor a mere quarrel between two commoners as to a supposed improper user of the common by one of the disputants, where there is no question as to title to the commonable lands, nor to any interest therein (*R. v. French; Ex parte Roberts*) (*q*). If there be no question as to the *validity* of process, the possibility of some issue arising from the fact that the alleged assault took place during the execution of process would not, of course, be sufficient to oust the jurisdiction (*cf. R. v. Briggs*) (*r*). There is, also, special provision as to assaults on the bailiffs and other officers of the county courts (see *post*, pp. 287, 404).

Ouster of jurisdiction when title to real property, &c., is raised in question.

ASSAULTS may be divided into two classes, namely, those which may be punished on *summary conviction* and those which are matter of *indictment* only.

Summary Jurisdiction in Assault.

It should be premised that, in case the court find the assault complained of to have been accompanied by any

Assaults punishable summarily.

(*p*) (1879) 4 Q. B. D. 9; 48 L. J. M. C. 33; 39 L. T. 574; 43 J. P. 188.

(*q*) *Ante*, p. 92.

(*r*) (1883) 47 J. P. 615.

Summary
jurisdiction
in assault.

attempt to commit felony, or be of opinion that it is, from any other circumstance, *a fit subject for a prosecution by indictment*, the court should abstain from any adjudication upon the matter, and must deal with the case in all respects as though it were one over which they had no summary jurisdiction, that is to say, must commit the accused for trial (24 & 25 Vict. c. 100, s. 46). The defendant would, however, appear to be without remedy (except, of course, by appeal to quarter sessions if imprisoned without the option of a fine) should the justices persist in dealing with the case even where there is evidence of an attempt to commit a felony, *e.g.*, an attempt to commit a rape; at any rate this would be so if the justices come to the conclusion *as a matter of fact* that there is not sufficient evidence to convict the accused of the attempt to commit a felony (*Wilkinson v. Dutton* (s); *Re Dawson* (t)).

COMMON ASSAULT.

COMMON
ASSAULT.
Who may
complain?

Form of
Information,
post, p. 1220.

This is an offence with which justices are empowered to deal summarily, though they may, if so minded, commit the accused for trial, as the offence is a common law misdemeanour. If it is desired that the case shall be summarily dealt with, proceedings must be instituted "*by or on behalf of the party aggrieved*" (24 & 25 Vict. c. 100, s. 42); but if the party aggrieved is unable, from infancy, idiocy, or any other cause, to make complaint, or to appoint a solicitor or agent, it may be made by a friend acting on his behalf, although not expressly authorized so to act. The magistrates, however, will be justified in adjudicating in proceedings instituted by an unauthorized person only where the person aggrieved is *unable*, and *not where he is unwilling*, to make complaint; for, although an assault may undoubtedly have been committed, the court cannot convict the assailant *summarily* against the desire of the person injured, who may prefer to seek a remedy by an action at law (*Nicholson v. Booth*) (u). But, where the person assaulted was so old, feeble, and infirm, and so greatly under the control of

(s) (1863) 32 L. J. M. C. 152; 3 B. & S. 821.

(t) (1878) 42 J. P. 456.

(u) (1888) 57 L. J. M. C. 43; 58 L. T. 187; 52 J. P. 662; 16 Cox, 373.

the person alleged to have committed the assault, that she was incapable of instituting proceedings, it was held that an information might be laid by a third person, who had not in fact been authorized by the party aggrieved (*Pickering v. Willoughby*) (x). If proceedings are regularly commenced, the court would probably be held entitled to convict summarily notwithstanding an arrangement of compromise arrived at by the parties; but it is usual, unless the case is attended by special circumstances, to permit the informant to withdraw the summons (cf. *Ex parte Bryant* (y); *S. C. sub nom. R. v. Wiltshire* (z)). An Irish court has held that justices have no power to *adjourn* the hearing on the ground that a *civil* action is pending by the defendant against the informant for an alleged assault arising out of the same transaction (*R. v. Tyrone JJ.* (zz)). The justices may, of course, commit the accused for trial *on indictment* although no information may have been laid by or on behalf of the "party aggrieved" (*R. v. Gaunt*) (a).

We may point out that it was decided under a repealed statute, and still appears to be the law, that, where the application is for sureties of the peace, the magistrates cannot convict the defendant summarily of an assault if the complainant is unwilling that such conviction should take place. As we have already seen, they cannot convict summarily of assault unless the party aggrieved seeks an adjudication by them (*R. v. Deny*) (b).

If several defendants are charged jointly with assault, they cannot insist, as of right, that their cases shall be taken separately; and, indeed, where two persons were *summoned separately* but charged jointly at the hearing, it seems to have been held that the court could force them to submit to be tried jointly (9 T. L. R. p. 522). It would, however, be competent to the court, and the court ought, to direct a severance if it be thought desirable in the interests of justice to allow the application to sever

Defendants
charged
jointly.

(x) [1907] 2 K. B. 296; 76 L. J. K. B. 709; 97 L. T. 244; 71 J. P. 311; 23 T. L. R. 466.

(y) (1863) 27 J. P. 277.

(z) (1863) 8 L. T. N. S. 242.

(zz) (1909) 2 Ir. R. 400.

(a) (1895) 73 L. T. 585; 60 J. P. 90; 18 Cox, 210.

(b) (1851) 20 L. J. M. C. 189; 2 L. M. & P. 230.

P. 1001.

(and as to the prosecution of "aiders and abettors" see *ante*, p. 149; and cf. 11 & 12 Vict. c. 43, s. 5). If two or more defendants are convicted of assault, the penalty should be imposed on the parties severally, and not jointly (*Morgan v. Brown (c)*; and cf. *R. v. Littlechild (d)*). As to assaults upon children under sixteen, see pp. 283, 287.

Children.
Penalty for
common
assault.

PENALTY.—IMPRISONMENT, with or without hard labour, for not exceeding TWO MONTHS;

Or, FINE, not exceeding (*together with costs* if the defendant is ordered to pay costs) 5*l.*, and, in default of *payment*, imprisonment, with or without hard labour, according to scale (p. 111).

NOTE, that the court *must not*, by cumulative sentences of imprisonment (other than for default of findings sureties) to take effect in succession in respect of several assaults committed on the same occasion, impose imprisonment for more than *six months* (42 & 43 Vict. c. 49, s. 18).

P. 1034.

Sureties and
compensation.

There is no power conferred on the court to direct the payment of compensation by the accused; but the court may, irrespective of statute, bind the defendant over to keep the peace, and (if it thinks fit to deal with the case under the Probation of Offenders Act, 1907, by dismissing the information or discharging the offender conditionally) the court may, in addition, order the defendant to pay damages for injury or compensation for loss not exceeding 10*l.*, and to pay reasonable costs (see *ante*, p. 101). It seems to be the better opinion that the defendant ought not to be directed to find sureties, or to enter into recognizances to keep the peace, *in addition* to the infliction of punishment by fine or imprisonment, but it is a course not infrequently adopted.

Form,
p. 1102.

Appeal.

There is no right of appeal to quarter sessions against the conviction unless the defendant is ordered to be imprisoned without the option of a fine.

Certificate of
dismissal.

If the justices, after hearing the case upon the merits, deem the offence not to be proved, *or* find the assault to have been justified, *or*, so trifling as not to merit punishment, they must dismiss the complaint and grant the accused (if he desire it) a certificate under their

(c) (1836) 4 A. & E. 515; 5 L. J. M. C. 77.

(d) (1871) L. R. 6 Q. B. 293; 40 L. J. M. C. 137; 35 J. P. 86, cited *ante*, p. 115.

hands of the fact of such dismissal (24 & 25 Vict. c. 100, s. 44). Care should be taken to specify distinctly the ground of dismissal (*Skuse v. Davis*) (e).

This certificate must not be granted unless the case has been heard *on the merits*; thus, it has been held that a magistrate had no jurisdiction to give such a certificate where the complainant, who had given to the defendant a notice of abandonment, did not appear, and no evidence on oath was taken. There had been no hearing on the merits, both parties were not present, nor was there any discussion as to the facts (*Reed v. Nutt*) (f).

It may, however, be granted where the complaint is dismissed, but the defendant bound over to keep the peace (*Ex parte Davis*) (g). The application for the certificate may be made in the absence of the prosecutor (*Handcock v. Somes*) (h); and, apparently, at any time (*Costar v. Hetherington*) (i).

The granting of the certificate is a ministerial and not a judicial act, so that justices, who have heard a charge of assault and dismissed it on any of the grounds already indicated, are *bound* to grant the certificate on the application of the defendant.

When a person has been convicted by justices of a common assault and has paid the penalty or suffered the term of imprisonment imposed upon him, he is released from all further or other proceedings, *civil or criminal*, "for the same cause" (and see *ante*, p. 100). So, too, he is similarly released when he has obtained a certificate of dismissal after a hearing of the charge on the merits (24 & 25 Vict. c. 100, s. 45). Such release (even so far as civil proceedings are concerned) does not extend beyond the person convicted:—not, *e.g.*, to the master in whose interest a servant has committed an assault (*Dyer v. Munday*) (k).

Effect of conviction, or certificate of dismissal.

It seems, too, that if the case were disposed of under the Probation of Offenders Act, 1907, the defendant

(e) (1839) 10 A. & E. 635.

(f) (1890) 24 Q. B. D. 669; 59 L. J. M. C. 311; 62 L. T. 635; 54 J. P. 599.

(g) (1871) 24 L. T. 547; 35 J. P. 551.

(h) (1859) 28 L. J. M. C. 196.

(i) (1859) 28 L. J. M. C. 198; 5 Jur. N. S. 985.

(k) [1895] 1 Q. B. 742; 64 L. J. Q. B. 448; 59 J. P. 276.

Certificate of
dismissal—
contd.

would probably be protected from all further proceedings (cf. per *Hawkins, J.*, in *R. v. Miles*) (*l*).

The conviction or certificate of dismissal would operate to preclude a defendant from being subsequently convicted *on indictment* for an unlawful or felonious wounding, or for an assault with intent to commit a felony, arising out of the same circumstances, because the justices have to *decide* whether the assault was accompanied by any attempt to commit a felony (*R. v. Elrington*) (*m*). But such a certificate cannot be pleaded in bar of an indictment for murder or manslaughter upon the death of the person assaulted, inasmuch as it is not a proceeding for the "same cause" (*R. v. Morris*) (*n*); *R. v. Friel* (*o*). A contrary view appears to have been adopted by *Grantham, J.*, in *R. v. Hilton* (*p*), but the attention of the learned judge does not seem to have been called to these authorities. It has been held, too, that a conviction for assault is an answer to a claim for damages for injuries to business arising out of the assault (*Masper v. Brown*) (*q*).

AGGRAVATED ASSAULTS.

What is meant
by an aggra-
vated assault.

We have seen that, if the evidence discloses the commission of an assault of such a serious nature that it could not be adequately punished on summary conviction, it is, generally speaking, the duty of the court to commit the accused for trial on indictment. Where, however, the person assaulted is a *female*, or is a *male child* whose age does not, in the opinion of the justices, exceed fourteen years, special provision is made, without the creation of any separate statutory offence, to enable the court to deal with the matter in a summary manner (24 & 25 Vict. c. 100, s. 43). The court may, under the circumstances, find the assault to be of "an aggravated nature," and have then power to inflict considerably heavier punishment than would be competent to them in an ordinary

(*l*) (1890) 24 Q. B. D. 423; 59 L. J. M. C. 56; 62 L. T. 572; 38 W. R. 334; 54 J. P. 549.

(*m*) (1862) 31 L. J. M. C. 14.

(*n*) (1867) L. R. 1 C. C. R. 90; 36 L. J. M. C. 84.

(*o*) (1893) 17 Cox, C. C. 325.

(*p*) (1896) 59 J. P. 778.

(*q*) (1876) 1 C. P. D. 97; 45 L. J. C. P. 203; 34 L. T. 254; 24 W. R. 369; 40 J. P. 265.

case of common assault, thus obviating the necessity for committing the defendant to the assizes or sessions for trial. But, as we have stated, the section does not create a separate offence (*Crocker v. Raymond*) (qq).

If the accused is charged with an offence over which the court has no summary jurisdiction, *or*, if the facts proved indicate that such an offence was really committed, whatever be the actual charge preferred in the information, the magistrates should not deal summarily with the case. Thus, if the defendant is charged with *indecent* assault on an adult, an offence, punishable only *on indictment*, the court must not convict the accused of an aggravated assault. If the evidence does not support the charge of *indecent* assault, the defendant should be discharged, and, if advisable, a fresh information laid. So, too, if the charge be that of assault simply, and the evidence show that a *rape* or an *indecent assault* was actually perpetrated, the justices should commit for trial, and should not treat the assault as aggravated. They might, however, if the charge preferred were one of assault, convict of an "aggravated" assault should they come to the conclusion that the facts would not be sufficient to secure a conviction on a charge of rape or indecent assault (*Re Dawson* (r) ; *Ex parte Thompson* (s)).

When defendant may not be convicted of an aggravated assault.

Proceedings may be commenced "either upon the complaint of the party aggrieved *or otherwise*" (24 & 25 Vict. c. 100, s. 43).

Anyone may "complain."

It is to be specially noted that where the person assaulted is *under the age of sixteen years*, the procedure to be adopted is that prescribed by the *Children Act, 1908*, so that the court may receive the unsworn evidence of a child of tender years and may judge of the age of the child by its appearance. So, too, the provisions of the Act as to the arrest of the accused in certain circumstances without warrant, the issue of a search warrant, the detention of the child in a place of safety, etc., are made applicable (see *ante*, p. 174, and *post*, p. 379). The procedure of the Children Act is, moreover, made applicable to all charges of offences "involving bodily injury"

Procedure in case of assault on child under sixteen years of age.

(qq) (1886) 3 T. L. R. 181.

(r) (1878) 42 J. P. 456.

(s) (1861) 30 L. J. M. C. 19 ; 3 L. T. N. S. 409 ; cf. *ante*, p. 131.

to any child under sixteen years of age (see the Schedule to the Act), so that, if any such child were assaulted in any fashion which caused *bodily injury to the child*, it would appear that the provisions as to procedure contained in that Act would apply howsoever the charge might be framed (see *post*, pp. 372, 379).

Penalty for
aggravated
assault.

PENALTY.—IMPRISONMENT, with or without hard labour, for not exceeding SIX MONTHS.

Or, FINE not exceeding (together with costs if ordered) 20*l.*, and, in default of *payment*, imprisonment *without* hard labour according to scale (p. 111), but not exceeding *two months*.

The court may in addition bind the defendant in his own recognizances to keep the peace for any period not exceeding six months from the expiration of the sentence; see *ante*, p. 113, as to cumulative sentences.

Appeal.

There is no right of appeal to quarter sessions unless imprisonment is awarded without the option of a fine.

Order for
separation,
&c., where
wife is
assaulted in
an "aggra-
vated"
manner.

If the accused person happen to be *the husband* of the person assaulted, the injured woman may apply for an order under the Summary Jurisdiction (Married Women) Act, 1895; and it is by that Act specially provided that such application may, by leave of the court, be made by summons to be issued and made returnable immediately upon the conviction (see HUSBAND AND WIFE, *post*, p. 547). Of course, if the defendant on reasonable grounds requests an adjournment, the hearing of the application should be adjourned.

It was held under the repealed section of the Act of 1878 that it was not necessary for the justices, on finding the assault to be "aggravated" and determining to grant an order of separation, to impose a severe punishment—indeed, they might, if they thought fit, impose only a nominal fine, as they were entitled to take into consideration, as a factor in assessing the extent of punishment, the circumstance that they were about to make an order for weekly payments, &c. (*Woods v. Woods*) (t).

In view of the fact that an "aggravated" assault is in its very nature one that "cannot be sufficiently punished" under the provision as to "common" assaults, which are punishable by a fine of 5*l.* or a term of two

months' imprisonment, this decision seems open to comment. Moreover, it is possible that it might not be held applicable under the Act of 1895, especially as no application can be made for an order under that statute in respect of a conviction for assault *on indictment* unless the accused is *sentenced* to a greater punishment than could possibly be imposed in respect of a common assault if disposed of summarily.

On the dismissal of a charge of "aggravated" assault after a hearing on the merits, *if the proceedings have been instituted by the person alleged to have been assaulted*, the defendant may apply for a certificate of dismissal as in the case of a common assault, and the like effects will follow the granting of such a certificate (*ante*, p. 281).

Certificate of dismissal.

ASSAULT ON A CONSTABLE IN THE EXECUTION OF HIS DUTY.

To assault, resist, or wilfully obstruct a constable in the execution of his duty is in itself an indictable offence; but the Municipal Corporations Act, 1882, and several other statutes make special provision for dealing with such an offence summarily in the case of borough constables, special constables, county constables, &c. There is, moreover, a *general* provision in the Prevention of Crimes Act, 1871, making an assault on ANY CONSTABLE *when in the execution of his duty* an offence against that Act, and rendering the accused liable on conviction to the following

34 & 35 Vict.
c. 112, s. 12.

Assault on
any constable.
Form of
Information,
post. p. 1220.

PENALTY.—IMPRISONMENT for not exceeding SIX MONTHS with or without hard labour; or, in case of a *second* offence within two years, NINE MONTHS. Or, FINE, not exceeding 20*l.*, and, in default of *payment*, imprisonment, with or without hard labour, according to scale (p. 111). Penalty goes to the police pension fund.

As to cumulative sentences in assault, see p. 113.

There is no right of appeal to quarter sessions unless imprisonment is awarded without the option of a fine.

It will be observed that the above general provision is confined to *assaults* on constables. It is, however, extended to cases of *resisting or wilfully obstructing* any constable or peace officer when in the execution of his duty by the Prevention of Crimes Amendment Act, 1885;

48 & 49 Vict.
c. 75.

Resisting or
obstructing
any constable.

Form of
Information,
post, p. 1220.

but, in these cases, the defendant cannot be imprisoned without the option of a fine, and the pecuniary PENALTY must not exceed 5*l.*, or in default of payment imprisonment, with or without hard labour, according to scale (p. 111). Cf. *Bastable v. Little*, and *Betts v. Stevens* (p. 734).

The Metropolitan Police Acts contain special provisions for the protection of the members of the metropolitan police force when engaged in the discharge of particular duties (24 & 25 Vict. c. 51, s. 3).

"When in the
execution of
his duty."

Assault on
constable
effecting
arrest.

And see further as to assaults on and refusing to assist constables, *ante*, p. 51; as to *special constables*, p. 892.

We have already seen (Chap. II., p. 46) that it is essential, in cases of misdemeanour at least, that the officer charged to execute a warrant should have it actually in his possession, properly "backed" if necessary, otherwise the accused, not being "found offending," is under no obligation to surrender. Unless, therefore, the offence is one in respect of which the officer is entitled to apprehend without warrant, or the officer is properly armed with a legal warrant, the person sought to be taken into custody could not be convicted of assaulting or resisting a constable *in the execution of his duty*, nor of a common assault provided that no greater violence was used than was necessary to prevent arrest. If it should appear that there was excess of violence employed in resisting an irregular arrest, although there could be no conviction for a common assault on the charge of assaulting the officer in the execution of his duty, yet proceedings might be commenced *de novo*, and an information laid for the common assault (*R. v. Brickhall*) (*u*).

On the other hand, if the charge originally preferred is that of a common assault, and it appears that the defendant would have been justified in doing the acts complained of but for the fact that the complainant was a constable acting in the execution of his duty, the accused must not be convicted of a common assault. The charge should be abandoned, and, if thought advisable, an information laid charging an assault on the officer in the execution of his duty.

(*u*) (1864) 33 L. J. M. C. 156; 10 L. T. 385; 10 Jur. N. S. 677.

OTHER ASSAULTS PUNISHABLE ON SUMMARY CONVICTION.

There are also several other classes of assaults as to which there is special statutory provision enabling them to be dealt with by a court of summary jurisdiction:—*e.g.*, (a) assaults with intent to obstruct the sale of grain or its free transit are made punishable by imprisonment with hard labour for a term not exceeding three months (24 & 25 Vict. c. 100, s. 39); (b) a like punishment may be imposed for violence displayed towards seamen, &c., with intent to prevent them exercising their calling (24 & 25 Vict. c. 100, s. 40); (c) assaults on officers or bailiffs of county courts when in the execution of their duty are punishable by a fine of 5*l.* (51 & 52 Vict. c. 43, s. 48); and as to *special* constables, see *post*, p. 892.

Special cases
of assault.

Assaults Punishable on Indictment.

It has already been pointed out that common assaults and assaults on constables acting in the execution of their duty may either be dealt with summarily or may be sent for trial on indictment, as the court may think desirable under the circumstances of the particular case. A *common assault* is a misdemeanour at common law, punishable upon indictment by one year's imprisonment (24 & 25 Vict. c. 100, s. 47); and the offence of *assaulting, resisting, &c., a peace officer in the execution of his duty* is a statutable misdemeanour punishable on indictment by two years' imprisonment and fine (24 & 25 Vict. c. 100, s. 38).

Common
assault.

Assault on a
constable.

It is a statutory misdemeanour punishable on indictment to commit an indecent assault on any female (24 & 25 Vict. c. 100, s. 52), or on any male person (24 & 25 Vict. c. 100, s. 62).

Indecent
assault.

In the former case the maximum punishment is two years' imprisonment, and in the latter ten years' penal servitude. If the person assaulted, whether male or female, is a child *under the age of THIRTEEN years*, it is no defence to prove that the child *consented* to the act of indecency (43 & 44 Vict. c. 45, s. 2).

By the Children Act, 1908, which came into operation on April 1st, 1909, if the person *indecently assaulted* (whether male or female) is, in the opinion of the court,

Summary
trial for
indecent
assault on

person under sixteen. *under sixteen years of age*, the accused may be tried summarily with his own consent, and is liable to six MONTHS' imprisonment with hard labour (8 Edw. 7, c. 67, s. 128. See *ante*, p. 135).

Evidence. In the case of indecent assault on a *female*, the wife of the defendant may be called as a witness either for the prosecution or defence *and without the defendant's consent* (*ante*, p. 174); while if the person indecently assaulted, whether male or female, is *under sixteen years of age*, the procedure of the Children Act, 1908, will be applicable, so that the unsworn testimony of a child of tender years may be received in evidence, &c. (see *post*, p. 380, and *post*, pp. 379—383). On the hearing a charge of indecent assault or other kindred offence against a woman or girl, the fact that a *complaint* was made by her shortly after the alleged occurrence, and the particulars of such complaint, may, generally, be given in evidence on behalf of the prosecution (see RAPE, *post*, p. 870).

Other indictable assaults. The following assaults are punishable, *on indictment only* (where the accused is not less than sixteen years of age), and, unless otherwise expressly stated, they are misdemeanours, and are triable at quarter sessions. The maximum punishment is added in brackets:—

- Actual bodily harm. (a) Any assault occasioning actual bodily harm. [Five years' penal servitude.] (24 & 25 Vict. c. 100, s. 47.)
- Maliciously wounding, &c., with intent to maim, &c. (b) Maliciously wounding, or causing grievous bodily harm, *or discharging or attempting to discharge loaded arms, with intent in any of the above cases to maim, disfigure, or disable, or do other grievous bodily harm, or to resist or prevent the lawful apprehension, or detainer of any person.* [Felony; triable at assizes only; penal servitude for life.] (24 & 25 Vict. c. 100, s. 18.)
- Shooting with intent, &c.

By "grievous bodily harm" is meant such an injury as would be likely seriously to interfere with the health or comfort of the injured.

As to what is sufficient evidence to go to a jury of an *attempt to discharge* a revolver within the meaning of this section, see *R. v. Linneker* (*y*).

The accused may be convicted under this section if he (*y*) [1906] 2 K. B. 99; 75 L. J. K. B. 385; 94 L. T. 856; 70 J. P. 293.

is proved to have fired at a crowd of persons without aiming at or seeking to injure any one person in particular (cf. *R. v. Fretwell*) (z).

- (c) Maliciously wounding or inflicting grievous bodily harm in any manner, that is, either with or without any weapon or instrument. [Five years' penal servitude.] (24 & 25 Vict. c. 100, s. 20.)

Maliciously wounding, &c.

A man was held properly convicted under this section who had used such threats and shown such violence towards his wife that she was induced to jump from a window and thereby broke her leg (*R. v. Halliday*) (a).

So, too, where the accused had, apparently "for fun," turned off the gas upon the staircase of a theatre and obstructed the door of exit with an iron bar, thus causing serious injury to two persons (*R. v. Martin*) (b). But where a husband, knowing his diseased condition, communicated venereal disease to his wife, who would not have consented to the intercourse if she had known the true facts, it was held that the husband could not be convicted either under this section or of occasioning actual bodily harm (*R. v. Clarence*) (c).

- (d) Attempting to choke, suffocate or strangle, or to render any person insensible or incapable of resistance, *with intent* to commit, or to enable another to commit, an indictable offence. [Felony; triable at assizes only; penal servitude for life, and whipping.] (24 & 25 Vict. c. 100, s. 21.)

Choking, &c., with intent to commit offence.

- (e) Maliciously, by means of any explosive, burning, maiming, disfiguring, disabling, or doing grievous bodily harm to any person. [Felony; triable at assizes only; penal servitude for life, and, if offender under sixteen, whipping.] (24 & 25 Vict. c. 100, s. 28.)

Malicious burning, maiming, &c., by explosive.

- (f) Causing gunpowder, or other explosive substance, to explode, or sending or delivering, or causing to be taken by any person, any explosive substance, or dangerous or noxious thing, or putting or laying at any place, or throwing at or applying to any person,

Causing explosion or giving or throwing noxious thing with intent to burn, maim, &c.

(z) (1864) L. & C. 443; 33 L. J. M. C. 128.

(a) (1890) 61 L. T. 701; 51 J. P. 312; 38 W. R. 256.

(b) (1882) 8 Q. B. D. 54; 51 L. J. M. C. 36; 46 J. P. 228.

(c) (1889) 22 Q. B. D. 23; 58 L. J. M. C. 10; 59 L. T. 780; 53

Placing
explosives
near build-
ings, &c.

any corrosive fluid or destructive or explosive substance, *with intent* to burn, maim, &c., whether any bodily injury be done or not. [Felony; triable at assizes only; penal servitude for life, and, if offender under sixteen, whipping.] (24 & 25 Vict. c. 100, s. 29.)

- (g) Maliciously placing or turning in, into, against, or near any building or vessel, any explosive, *with intent* to do bodily injury to any person, whether or not explosion take place or bodily injury be done. [Felony; fourteen years' penal servitude, and, if offender under sixteen, whipping.] (24 & 25 Vict. c. 100, s. 30.)

The Act also deals with the *possession* of *explosives* for the purpose of the commission of any of the felonies therein mentioned (s. 64); but see the wider provisions of later Acts, title EXPLOSIVES (*post*, p. 454).

Assault with
intent to
commit
felony.

- (h) Assault with intent to commit a felony. [Two years' imprisonment and fine.] (24 & 25 Vict. c. 100, s. 38.)

Assault with
intent to rob.

- (i) Assault with intent to rob. [Felony; five years' penal servitude.] (24 & 25 Vict. c. 96, s. 42.)

Assault with
intent to rob,
when armed,
&c.

- (k) Being armed with offensive weapon, robbing or assaulting with intent to rob any person; *or*, in company with one or more, robbing or assaulting with intent to rob; *or* robbing, and at the time of, or immediately before or after, the robbery, wounding, beating, or using other *personal* violence. [Felony; triable at assizes only; penal servitude for life, and whipping.] (24 & 25 Vict. c. 96, s. 43.)

Robbery with
violence.

Cf. post,
p. 666.

ATTEMPTS to commit crimes, see *ante*, p. 164.

BANKRUPT AND FRAUDULENT DEBTORS.

OFFENCES UNDER THE DEBTORS ACT, 1869, AND THE BANKRUPTCY ACT, 1883.

A person adjudged bankrupt under the Bankruptcy Act, 1883, or in respect of whose estate a receiving order has been made, is liable to be indicted and punished for certain offences of a fraudulent character, which were not punishable at the common law.

If the defendant can satisfy the jury that he had *no intention to defraud or to conceal the state of his affairs, he will be entitled to be acquitted*; and justices are expressly required "to take into consideration any evidence adduced before them tending to show that the act charged was not committed with guilty intent" (*R. v. Beak*) (*d*). The examinations of the debtor taken in the bankruptcy courts are admissible in evidence against him; and, indeed, *parol* evidence may be received to prove admissions made by the debtor on his public examination (see *R. v. Erdheim*) (*e*). None of the offences is triable summarily, but all are triable at quarter sessions.

Intention to defraud.

(a) Any person who has become *bankrupt*, or in respect of whose estate a receiving order has been made, commits a *felony* if, after the presentation of the bankruptcy petition by or against him, he *absconds* (or makes preparations for absconding) from England with any part of his property to the amount of 20*l.* or upwards, which ought by law to be divided amongst his creditors. So, too, a like offence is committed if he take a similar course within four months next before the presentation of the petition. [Two years' imprisonment.] (32 & 33 Vict. c. 62, s. 12.) It has been held that an infant who acted as a trader could not commit this offence (*R. v. Wilson*) (*f*).

Bankrupt absconding with property exceeding 20*l.* in value.

In one case, a debtor having assigned all his property to a trustee for the benefit of creditors, the trustee took possession of the debtor's effects and carried on his business. The debtor afterwards quitted England taking with him 120*l.*, part of a sum which he *had in his possession at the date of the deed and retained in his possession*. An adjudication in bankruptcy following within four months, it was held that the 120*l.* was part of "his property," and that the debtor was rightly convicted under this section (*R. v. Humphris*) (*g*).

Any person who has become *bankrupt*, or in respect of whose estate a receiving order has been made, may

(*d*) (1890) 61 L. T. 596; 54 J. P. 360; 16 Cox, 718.

(*e*) [1896] 2 Q. B. 260; 65 L. J. M. C. 176; 44 W. R. 607.

(*f*) (1880) 5 Q. B. D. 28; 49 L. J. M. C. 13; 41 L. T. 480.

(*g*) [1904] 2 K. B. 89; 73 L. J. K. B. 464; 90 L. T. 555; 11 Manson, 139; 68 J. P. 325.

be convicted of a *misdemeanour* if (32 & 33 Vict. c. 62, s. 11; 46 & 47 Vict. c. 52, s. 163 (i.)) :—

Omitting to discover property, and deliver it to trustee.

(b) He does not fully and truly *discover* to the trustee administering his estate all his property, and how and when he has disposed of any portion of it, if so disposed of otherwise than in the ordinary way of his trade;

(c) He does not *deliver up* to such trustee all the property which he is required by law to deliver up, together with all the books, documents, &c., relating thereto;

Concealment or fraudulent removal of property.

(d) It appears that, *AFTER the presentation of the bankruptcy petition* by or against him, or *within* FOUR MONTHS *before* that event, he has *concealed or fraudulently removed* any property to the value of 10*l.* or upwards; or *concealed any debt* due to or from him; or concealed, destroyed, mutilated, or *falsified any book or document* relating to his affairs; or been privy to any concealment or falsification of such a book or document, whether such falsification were by means of false entries or fraudulent omissions;

Falsification of books, &c.

Fraudulently obtaining property on credit, &c.

(e) *Within* FOUR MONTHS *before the presentation of the bankruptcy petition* by or against him, or before the making of a receiving order under s. 103 of the Bankruptcy Act, 1883 (cf. 53 & 54 Vict. c. 71, s. 26), he has (i.) by any *false representation or other fraud*, obtained any property *on credit* and not paid for it; or, (ii.) being a trader, has, under the false pretence of carrying on business and dealing in the ordinary way of trade, obtained any property on credit and not paid for it; or, (iii.) being a trader, has pawned, pledged, or disposed of, otherwise than in the ordinary way of his trade, property which he has obtained on credit and not paid for.

Omissions in statement of affairs.

(f) He makes any *material omission* in a statement relating to his affairs; or prevents the production of any material book or document; or attempts to account for a part of his property by fictitious losses and expenses, either after the presentation of the petition or at any meeting of his creditors within four months next before that event;

(g) He, by false representation or other *fraud*, seeks to

obtain the *consent* of any of his creditors to an agreement with reference to his affairs ;

- (h) He fails for ONE MONTH to inform the trustee of any false debt which to his knowledge or in his belief has been proved against the estate.

The provisions of the Act as to offences by *bankrupts* apply to any person, whether a trader or not, in respect of whose estate *a receiving order has been made* (46 & 47 Vict. c. 52, s. 163 (ii.)).

It must, too, be added that :—

- (i) *Any person* (i.e., *whether a bankrupt or not*) commits a misdemeanour if, incurring any debt or liability, he has *obtained CREDIT under false pretences* or by means of *any other fraud* ; or if, *with intent to defraud his creditors*, he has made any *gift, transfer of, or charge upon his property*, or has *concealed or removed* any portion of his property after or within two months before the date of an unsatisfied judgment or order for payment of money obtained against him (32 & 33 Vict. c. 62, s. 13). In order to secure a conviction for “obtaining credit by false pretences” it is necessary to establish an *intention to defraud* (*R. v. Muirhead*) (*gg*).

The fraudulent obtaining of CREDIT by any person.

Fraudulent transfer.

A man who had ordered and consumed food at an eating-house without any intention of paying for it was held to have been rightly convicted under this section (*R. v. Wm. Jones*) (*h*). To obtain, by fraud, the renewal of a bill of exchange is within the section (*R. v. Pierce*) (*i*).

It seems that the intent to defraud the creditors must be an intent to defraud the creditors *as a body*, and not simply an individual creditor, otherwise a conviction for fraudulent transfer cannot be sustained (*R. v. Rowlands*) (*j*).

The plaintiff in an action to recover unliquidated damages, as, *e.g.*, an action for breach of promise of marriage, is not, *until judgment has been recovered*, a “creditor” of the defendant within the meaning of this

(*gg*) (1908) 53 S. J. 164 ; 25 T. L. R. 88 ; 73 J. P. 31.

(*h*) [1898] 1 Q. B. 119 ; 67 L. J. Q. B. 41 ; 77 L. T. 503 ; 46 W. R. 191 ; 62 J. P. 33.

(*i*) (1887) 56 L. J. M. C. 85 ; 56 L. T. 532 ; 51 J. P. 790.

(*j*) (1882) 8 Q. B. D. 530 ; 51 L. J. M. C. 51 ; 46 J. P. 43.

section (*R. v. Hopkins and Ferguson*) (*k*). And see *R. v. Wyatt*, cited *post*, p. 469.

Each of the above-mentioned misdemeanours is punishable with two years' imprisonment except offence (*i*), which is punishable with one year's imprisonment.

The obtaining
of credit by
an undis-
charged
bankrupt.

It is, too, further provided by the Bankruptcy Act, 1883, that if an *undischarged bankrupt* obtains credit from any person to the extent of 20*l.*, without informing such person that he is an undischarged bankrupt, the bankrupt commits a misdemeanour punishable as the offence (*i*) under the Debtors Act, 1869 (46 & 47 Vict. c. 52, s. 31).

It is not necessary to constitute the offence that there should be any express agreement as to terms of credit: it is sufficient if the goods are supplied and are not paid for (*R. v. Peters* (*l*); *R. v. Juby* (*m*)). Moreover, it is especially to be observed that an intent to defraud is not a material ingredient in the offence of "obtaining credit" within this section (*R. v. Dyson*) (*n*).

As to the application of the Vexatious Indictments Act, see *ante*, p. 133.

BARBED WIRE.

Barbed wire.

Where there is in or on land adjoining to a highway any *wire with spikes or jagged projections* so placed that the same is a nuisance to the highway, that is, so placed that it *may probably be injurious to persons or animals lawfully using the highway*, the highway authority may, by written notice, require the occupier of the land within a time stated (not to be less than one month nor more than six months) to abate such nuisance. In case the occupier does not comply with this requirement, the authority may apply to a court of summary jurisdiction, and *such court*, if satisfied that a nuisance exists, may *by summary order direct the occupier to abate the nuisance*. Should this order not be obeyed within a reasonable time, the authority may themselves remove the wire and

(*k*) [1896] 1 Q. B. 652; 65 L. J. M. C. 125; 44 W. R. 585.

(*l*) (1886) 16 Q. B. D. 636; 55 L. J. M. C. 173; 54 L. T. 545; 50 J. P. 631.

(*m*) (1887) 55 L. T. 788; 51 J. P. 310.

(*n*) [1894] 2 Q. B. 176; 63 L. J. M. C. 124; 70 L. T. 877; 58 J. P. 528; 42 W. R. 526.

recover the expenses in a summary manner, as though they had been expenses incurred in respect of any highways (56 & 57 Vict. c. 32). Barbed wire
—*contd.*

Provision is made in the event of the highway authority being themselves the occupiers of the land. In that case, any ratepayer within the district may take proceedings, and the notice to abate may be served upon the clerk of the local authority (*ib.* s. 4).

BASTARDY.

Complaints, orders, and warrants relating to the affiliation of illegitimate children are not regulated by Jervis' Act or the Summary Jurisdiction Act, 1879, except so far as concerns the backing of warrants, the levying of sums ordered to be paid, and imprisonment in default of payment, which is to be imposed as in the case of a conviction on information (11 & 12 Vict. c. 43, s. 35; 42 & 43 Vict. c. 49, s. 54). The Summary Jurisdiction Act, 1879, however, applies to the proof of service of any summons, notice, process, or document in any matter of bastardy, and to an appeal from any order therein. As to the enforcement of an order in bastardy, see *post*, p. 306, and *ante*, pp. 54, 60. How far the
Summary
Jurisdiction
Acts are
applicable.

Pp. 1016, 1055.

Application by the Mother.

It may be premised that no payment or arrangement made by the father of a bastard child with a view to sheltering himself from further liability is a bar to the jurisdiction of justices, inasmuch as the order is for the benefit of the child as well as the mother. Such an arrangement is no more than an element to be taken into consideration, especially with reference to the weekly amount (if any) which the justices may think proper to award (*Follit v. Koetzow*) (o). And, when an order has been made, it may be enforced notwithstanding that an agreement has been entered into for the release of the father on payment of a sum of money paid down instead Effect of
agreement to
release the
putative
father.

(o) (1860) 2 E. & E. 730; 29 L. J. M. C. 128; 2 L. T. 178; 8 W. R. 432.

of the weekly payments provided for by the terms of the order (*Griffiths v. Evans*) (*p*).

Who may
apply for an
order.

Any spinster, widow, or married woman living apart from her husband may apply to any justice acting for the petty sessional division of the county, or for the borough or place, in which she may be resident for the time being, for a summons to be served upon the man alleged by her to be the father of the child in respect of which she applies (35 & 36 Vict. c. 65, s. 3).

The words of the statute are "single woman," but it has been held that the application may be made by a married woman, not cohabiting with her husband, provided that she can furnish sufficient evidence of the non-access of her husband at the period when conception took place. But an application *cannot* be entertained on the part of a woman *who is living with her husband*, although the child may have been *conceived* during a prolonged absence of the husband, as, *e.g.*, an absence beyond seas (*Jones v. Davies*) (*q*). Nor, it seems, can application be successfully made on the part of a woman *living separate* from her husband, in respect of a child *born before her marriage* with him (*Peatfield v. Childs*) (*r*).

And this inability on the part of a married woman was held to exist even when she had, long before her marriage, taken out a summons against the putative father which it was found impossible to serve upon him (*Tozer v. Lake* (*s*); *Stacey v. Lintell* (*t*)).

Proof of non-
access on
application
by wife living
separate from
her husband.

As to what is sufficient proof of *non-access* where the applicant is living apart from her husband, it is to be observed that, although the evidence need not amount to proof of actual physical impossibility of access by the husband, it must, nevertheless be "strong, distinct, satisfactory, and conclusive" (*Morris v. Davies* (*u*); *Aylesford Peerage Case* (*x*); *Bosvile v. Att.-Gen.* (*y*)). The

(*p*) (1882) 46 L. T. 417; 30 W. R. 427.

(*q*) [1901] 1 K. B. 118; 70 L. J. K. B. 38; 83 L. T. 412; 49 W. R. 136; 65 J. P. 39.

(*r*) (1899) 63 J. P. 117.

(*s*) (1879) 4 C. P. D. 322; 41 L. T. 280; 43 J. P. 656.

(*t*) (1879) 4 Q. B. D. 291; 48 L. J. M. C. 108; 43 J. P. 510.

(*u*) (1828) 2 Cl. & Fin. 242.

(*x*) (1886) L. R. 11 App. Cas. 1.

(*y*) (1887) 12 P. D. 177; 56 L. J. P. D. 97; 57 L. T. 88.

presumption of law is that the child born of a married woman is the offspring of her husband, unless the contrary be shown; and the onus of proof rests upon those who assert that the child born in wedlock is not the legitimate offspring of the married couple. Moreover, non-access must be proved by evidence other than the testimony of those whom the law presumes to be the parents. Neither the husband nor the wife is a competent witness to prove non-access after the date of the marriage, nor to speak to any facts collateral or otherwise tending to show that the child in question is illegitimate (*Guardians of the Poor of Nottingham v. Tomkinson*) (z). The presumption does not, however, apply where persons are living apart *under an order of the court*, so that a child born nine months after an order for judicial separation is presumably illegitimate (*Hetherington v. Hetherington*) (a).

Whatever may be the country of the parents or the place where the conception took place, the court would have jurisdiction in respect of any child born in England provided that the father could be served in England; but the court would have no jurisdiction to make an order if it appeared that the child was born elsewhere than in England [or Scotland (44 & 45 Vict. c. 24); see Appendix, p. 1061]. It is, however, to be observed that a child born in a British ship on the high seas is deemed to have been born in England (*Marshall v. Murgatroyd*) (b); and cf. *ante*, p. 9. It follows, therefore, that no order can be made in respect of a child born in Ireland or abroad; nor can an order be obtained in respect of a stillborn child. In the case of twins, two separate orders should be made. We have seen that the court has jurisdiction though the *child is born* in Scotland; but, if the *father is resident* in Scotland and could not be served in England or Wales, the application for process should not be made in England or Wales, as there is no provision authorizing service of the

In respect of
what children
application
may be made.

(z) (1879) 4 C. P. D. 343; 48 L. J. M. C. 171; 28 W. R. 151 (and see 51 J. P. 504).

(a) (1887) 12 P. D. 112; 57 L. T. 533; 51 J. P. 307.

(b) (1871) L. R. 6 Q. B. 31; 40 L. J. M. C. 7; 23 L. T. 393; 19 W. R. 72.

summons on the putative father in Scotland (*Berkeley v. Thompson*) (c).

WHERE appli-
cation should
be made.

We have seen that the mother must make application in the district in which she may be *resident* for the time being. Justices in another district would have no jurisdiction to entertain the matter; and any order they might make would be avoided, although no objection to the jurisdiction were made at the hearing (*Vevers v. Mains*) (d). It is not, however, necessary that she should have a *fixed* place of abode; and, if she should happen not to have a fixed place of residence, she may apply to any justice who has jurisdiction in the district in which she may chance to be, or to which she may choose to repair (*Lawrence v. Ingmire*) (e). But should the mother fail to obtain an order after a hearing on the merits before one bench of justices, and then change her habitation with the sole object of securing a new tribunal which she hopes may prove more favourable to her, the application will not be entertained by the justices having jurisdiction over the place of her latest residence if they are satisfied that she has no intention of remaining there longer than may be necessary to obtain the order (*R. v. Myott*) (f).

WHEN
application
must be
made.

The application may be made by the mother *before* the birth of the child, but, in that case, she must support the allegation of paternity *upon oath*, otherwise no process can issue (35 & 36 Vict. c. 65, s. 3).

If the mother delay her application for more than *twelve months after the birth*, it will be too late, unless she is in a position to support it by a declaration *upon oath* that the alleged father has, during such period of twelve months, paid money towards the maintenance of the child. But, if a summons were to issue without such proof, and the alleged father were to appear and *defend the case without objection*, this would operate to *wave the irregularity in the process*, and give the court jurisdiction to decide the case (*R. v. Fletcher*) (g); *R. v.*

(c) (1884) L. R. 10 App. Cas. 45; 54 L. J. M. C. 57; 49 J. P. 276 (see *ante*, pp. 44, 54).

(d) (1888) 4 T. L. R. 724.

(e) (1869) 20 L. T. 391; 33 J. P. 309.

(f) (1863) 32 L. J. M. C. 138; 7 L. T. N. S. 785; 11 W. R. 424.

(g) (1871) L. R. 1 C. C. 320; 40 L. J. M. C. 123; 24 L. T. 742; 35 J. P. 695.

Berry (h); *R. v. Turner (i)*). Moreover, should the mother be able to prove by testimony on oath that the alleged father *ceased to reside in England* within the *twelve months next after the birth* of the child, she may apply at any time within twelve months *after his return* to England. It was held that such application might be made where the alleged father had left England a month *before* the birth and had returned after an absence of sixteen months. This decision was rested on the ground that the man “ceased to reside in England” during the *whole* of the time that he was away (*R. v. Evans (k)*).

We have seen that, except under the circumstances before mentioned, the mother must *apply* for a summons within the twelve months next after the birth of the child; but, if she make her application within the time limited, it will not be defeated by a delay in *the issue* of the summons beyond the prescribed period, occasioned by the fact that the whereabouts of the defendant could not be ascertained (*R. v. Chugg (l)*; *Ex parte Harrison (m)*).

Issue of two
or more
summonses.

Indeed, if one summons be issued and cannot be served, the justice may issue a fresh summons even after the expiration of the twelve months. But it would seem that the fresh summons so granted must necessarily be issued by the justice to whom the application was originally made (*R. v. Pickford (n)*). In view of risks arising from the death or disability of the magistrate applications for a summons may be made to different justices simultaneously; but, if a summons is issued on one of the applications *and adjudicated upon*, the other applications are also exhausted, even though the summons be dismissed solely for want of corroborative evidence, (cf. *post*, p. 302; *R. v. Robinson (o)*).

The *justice to whom application is made* will there-
upon issue his summons, calling upon the alleged father

The summons.

(h) (1859) 28 L. J. M. C. 86; 32 L. T. O. S. 323.

(i) (1865) 34 L. J. M. C. 10.

(k) [1896] 1 Q. B. 228; 60 J. P. 39; 65 L. J. M. C. 29; 44 W. R. 271.

(l) (1872) 22 L. T. 536; 34 J. P. 469.

(m) (1852) 16 Jur. 726.

(n) (1861) 30 L. J. M. C. 133; 4 L. T. N. S. 210; 9 W. R. 634.

(o) [1898] 1 Q. B. 734; 67 L. J. Q. B. 510; 78 L. T. 350; 46 W. R. 462; 62 J. P. 309.

to appear at some petty sessions to be held, *not less than six clear days afterwards*, for the petty sessional division for which such justice usually acts (35 & 36 Vict. c. 65, s. 3).

The Act provides that the summons should be issued by the justice to whom the application is made, and if another justice were to issue the summons it would be irregular; but the irregularity might be waived by the defendant if he appeared and sought a decision on the merits (*R. v. Fletcher*) (*p*). The justice should ascertain that the putative father is in England or Wales or that his "last place of abode" is within those limits, because, if this were not so, the summons could not be duly served upon him (*R. v. Lightfoot*) (*q*).

Service of
summons.

The summons must be served upon the alleged father personally, or "left at his last place of abode six days at least before the petty sessions." The word "last" means the then present place of abode, if he have any, and the last which he had if he has ceased to have any (*R. v. Evans*) (*r*). In case of the *temporary* absence of the defendant from his usual place of abode, without acquiring any fresh permanent place of abode, the service should be at the usual place of abode (*R. v. Higham*) (*s*); but, unless the justices are satisfied that the summons has come to the personal notice of the defendant, they should, under such circumstances, adjourn the case until he returns or has notice (cf. *Re Smith* (*t*); *Re Williams* (*u*)). Where the summons was left at the house of the defendant's father a few weeks after the defendant had set out for America with the intention of settling in that country, and at a time when he had *in fact a place of abode in America*, the Court of Appeal held the service insufficient, and that the justices had no jurisdiction to make the order (*R. v. Farmer*) (*x*). But, where the summons was served at the last place of abode in England,

(*p*) (1884) 48 J. P. 407.

(*q*) (1856) 25 L. J. M. C. 115; 20 J. P. 677; 4 W. R. 655.

(*r*) (1850) 19 L. J. M. C. 151.

(*s*) (1857) 26 L. J. M. C. 116.

(*t*) (1875) 32 L. T. 394.

(*u*) (1852) 21 L. J. M. C. 46.

(*x*) [1892] 1 Q. B. 637; 61 L. J. M. C. 55; 65 L. T. N. S. 736; 56 J. P. 341; 40 W. R. 229.

within ten days after the defendant's departure for America and *before he had acquired another place of abode*, the service was held to be sufficient (*R. v. Webb*) (y). And, if the justices are satisfied that the defendant left the country merely to avoid service or for a temporary purpose, the facts would generally warrant the conclusion that "his last place of abode" was in England.

Service of
summons—
contd.

If the putative father is a *soldier* in the regular forces no process can be issued against him if he has been placed under orders for service beyond the seas; and in any event, if he is quartered out of the jurisdiction, process must be served on his commanding officer, with a sufficient sum of money to enable the soldier to attend the hearing and return to his quarters (44 & 45 Vict. c. 58, s. 145). As to the putative father's absence in Scotland, see *ante*, p. 54.

Service on
soldier.

Cf. post, p. 885.

When the application is made *before birth*, the day named in the summons must lie beyond the period at which the mother expects the child to be born; and the hearing may be adjourned, if necessary, for a time not extending beyond *two months* after that event. Further delay would necessitate a commencement *de novo* (8 & 9 Vict. c. 10, s. 4). If the application is made *after the child's birth*, the order must be applied for *within forty days* from the service of the summons (7 & 8 Vict. c. 101, s. 4). The court may, however, adjourn *the hearing* as often as they think fit, if the application for the adjournment is made in due course within the time limited by the statutes. Any *one* justice may *adjourn* the hearing, and may suffer the defendant, in the meantime, "to go at large upon his entering into a recognizance with or without a surety or sureties" conditioned for his appearance at the adjourned hearing (36 Vict. c. 9, s. 7).

Date of
hearing—
adjournment.

On the appearance of the defendant or proof of due service of the summons, unless the paternity of the child is admitted, the case for the mother is opened in the ordinary way. But it is to be observed that the mother is an essential witness, and should be called even if the paternity is admitted; therefore, if she die before the

THE HEAR-
ING.

Applicant's
case.

hearing, the court will have no jurisdiction to entertain the application (*R. v. Armitage*) (z).

Attendance
of witnesses.

Witnesses may, if necessary, be summoned from any part of England or Wales; and, if a witness does not appear, a warrant may be granted on proof of *personal* service of the summons and of the fact that reasonable expenses were tendered. If a witness does appear, but refuses to give evidence, he may be committed for a period not exceeding fourteen days, or until he shall sooner submit himself to be examined (7 & 8 Vict. c. 101, s. 70). The putative father may himself be compelled to give evidence on behalf of the mother, and, if he happens to be in court, there seems no reason why he should not be served with a summons on the spot and compelled to testify (and see *ante*, p. 85).

Corroboration
necessary.

If the paternity of the child is not distinctly admitted at the hearing by the defendant or his advocate, an order cannot be made unless the evidence of the mother is "*corroborated* in some material particular by other evidence to the satisfaction" of the court (35 & 36 Vict. c. 65, s. 4). The testimony required may consist in proof, by persons other than the mother, of acts of undue familiarity before or about the time when conception must have taken place; and, indeed, the court may act upon circumstances occurring some months anterior to the time of the conception of the child (*Cole v. Manning*) (a). Or the corroboration may rest upon admissions made by the alleged father to or in the presence of persons other than the mother; or upon letters written by him to her, the terms of which leave no reasonable doubt as to the nature of the relations between them. If such letters constitute the only corroboration, and are not admitted, the handwriting must be proved by some third person. The payment of money for the child's maintenance, if supported by *corroborative* testimony, is also a fact from which the justices will draw their own conclusion.

In one case, an action for breach of promise of marriage, the plaintiff was overheard to say to the

(z) (1872) L. R. 7 Q. B. 773; 27 L. T. 41; 42 L. J. M. C. 15; 20 W. R. 1015.

(a) (1876) 2 Q. B. D. 611; 46 L. J. M. C. 175.

defendant: "You always promised to marry me, and you didn't keep your word." No reply was made by the defendant, and the defendant's silence was held to amount to "corroboration" (*Bessela v. Stern*) (b). But it has been held that the mere fact that the defendant had not answered letters from the plaintiff, in which she alleged that he had promised to marry her, was no evidence corroborative of such promise as sworn to by the plaintiff (*Wiedemann v. Walpole*) (c). Indeed, silence does not amount to evidence of an admission, unless the circumstances render it more probable that a man would answer the charges made against him rather than that he would not. In one case justices were held not to have acted wrongly in making an order, without further corroboration, under the following circumstances: two months before the birth, the defendant, a boy of nineteen, went with his mother to the house of the applicant's stepmother "to clear it up." When the stepmother asked him if he was the father, *he did not answer*, and the applicant's sister thereupon asked him "if he had been out with" the applicant. Defendant said yes, he had. "It might have been either that he was stupidly silent, or that he could not deny it (*i.e.*, the paternity), but the magistrates had the witnesses before them, and could judge from their demeanour and the way the evidence was given what was the proper inference to be deduced as to the meaning of his silence" (per *Russell, C.J.*, in *Hill v. Denmark*) (d). The corroboration must, however, be evidence which has some relation to the conduct of the putative father or have some relation to the probability of his being the father (per *Alverstone, C.J.*, in *Reffell v. Morton*) (e). In one case, the defendant and the mother of the child (who was a maid-servant in the employ of his grandfather) were seen out together "in the lanes" of an evening, and, after the birth, defendant asked if the girl "was going to swear the child." This was held to be sufficient corroboration (*Wills, J., dissentiente*; *Harvey v. Anning*) (f).

Corrobor-
ation—*contd.*

(b) (1877) 2 C. P. D. 265; 42 J. P. 197.

(c) [1891] 2 Q. B. 534; 60 L. J. Q. B. 762.

(d) (1895) 59 J. P. 345.

(e) (1906) 70 J. P. 347.

(f) (1903) 87 L. T. 687; 67 J. P. 73.

Cross-examination as to intercourse with other men.

If it appear that the woman is of loose habits or immoral character, both her own evidence, and any which she may adduce, will of course be received with suspicion, and sifted with the greatest care. A woman is bound to answer as to whether she has had connection with men other than the defendant. If she deny the fact, witnesses cannot be called to contradict her, unless the question refer specially to some occasion which, from the alleged date, might have affected the paternity of the child (cf. *Garbutt v. Simpson*) (*g*). See also as to the impeachment of an applicant's credit, *ante* p. 178, and *post*, p. 870.

Defendant's case.

The defendant is himself a competent witness on his own behalf, but no provision is made for enforcing his attendance (except as a witness) if he chooses to disregard the initiatory summons. The order would simply be made against him in his absence in case the mother were believed and her evidence corroborated. But, if he be summoned as a witness on behalf of the applicant and his expenses tendered, he may be brought up on warrant, if necessary, like anybody else, and should he refuse to give evidence may be committed to prison (*R. v. Flavell*) (*h*). The same course may be adopted if the defendant *voluntarily* gives evidence, and refuses, or declines, to answer a question in cross-examination. And this is so even although he offer to withdraw his defence and submit to an order (*ib.*). It must, however, be remembered that, if the defendant is called as a witness on behalf of the applicant, he cannot be *cross-examined* by the applicant or her advocate unless he has given his evidence in such fashion as would, in the opinion of the court, justify the adoption of such a course (cf. *Price v. Manning* (1889) 42 Ch. D. 373).

No right of reply.

The better opinion seems to be that, notwithstanding 11 & 12 Vict. c. 43, s. 35, the mother is no more entitled to a reply than any other complainant in a court of summary jurisdiction (cf. 11 & 12 Vict. c. 43, s. 14).

Pp. 1006, 1016.

Costs.

If the summons be dismissed, the court cannot order the complainant to pay the defendant's costs.

The order.

If the court adjudge the man to be the putative father, they may, if they think fit, make an order on him for

(*g*) (1863) 32 L. J. M. C. 186 ; 8 L. T. N. S. 423.

(*h*) (1885) 14 Q. B. D. 364 ; 49 J. P. 406 ; 52 L. T. 133.

payment of a *weekly sum not exceeding 5s.* for the maintenance and education of the child, and of the *expenses incidental to the birth*, and of the funeral expenses (if the child has died). They may also order payment of the *costs* "incurred in the obtaining of such order." If the application for the summons be made before, or within *two calendar months* after, the birth, the *weekly sum* may, if the justices think fit, *be calculated from the birth* (35 & 36 Vict. c. 65, s. 4). If the defendant is a *clergyman*, a certificate must be sent to the Bishop (*post*, p. 388).

The payment of the weekly sums should run from the *date of the order*, unless the summons was applied for *before the birth or within two months afterwards*. In either of the two latter cases the justices are, as we have seen, at liberty to direct that payment shall run from the *date of birth*.

It is absolutely necessary that the order should show on the face of it that it is made for the "maintenance and education" of the child (*R. v. Padbury*) (*i*).

Provision is made to enable payment of the weekly sums to be continued to a guardian, to be appointed by any two justices, in the event of the mother's death, or of her incapacity through insanity or imprisonment (7 & 8 Vict. c. 101, s. 5).

Provision in case of death, &c., of mother.

The justices' clerk sends (by post or otherwise) a duplicate of any order or of such appointment to the clerk of the union in which the mother resides (*ib.*).

Except as regards the recovery of arrears, the order will cease to have any effect on the death of the child; and, although the court may direct in the order that payments shall continue until the child reaches any age not exceeding sixteen years, yet, if no such direction be given, the order will become inoperative (except as to arrears) on the child attaining the age of thirteen years (35 & 36 Vict. c. 65, s. 5).

Duration of the order.

A soldier or marine is liable to contribute to the maintenance of a bastard to the same extent as any other man; but no execution can issue against his person, kit, etc. For the purpose of such maintenance *6d.* may be stopped from the daily pay of a non-commissioned officer not below the rank of sergeant, and *3d.* from the

Soldiers.

(*i*) (1880) 5 Q. B. D. 126; 49 L. J. M. C. 55; 28 W. R. 182.

daily pay of an ordinary soldier (44 & 45 Vict. c. 58, s. 145). See further, *post*, p. 885.

Infants.

A bastardy order may be made against an *infant*.

Effect of
marriage of
mother after
date of order.

It is competent to the justices to direct as part of their original order that payment shall cease on the marriage of the mother (*Pearson v. Heys (k)*; *Williams v. Davies (l)*).

But, if no such direction is inserted in the order, although the mother's husband would become liable to support her bastard (4 & 5 Will. 4, c. 76, s. 57), it would seem that the payments must be continued under the order, and that the mother is entitled to the custody of the child (*Hardy v. Atherton (m)*; *Davies v. Evans (n)*; *R. v. Nash (o)*; and cf. *Barnardo v. McHugh (p)*).

Enforcing
the order.

After *one calendar month* from the date of the order, any justice, *e.g.*, one for the place in which the mother *may then be residing*, may, by warrant, cause the defendant to be brought before two justices if it be declared on oath that any sums ordered to be paid have not been paid, and it be proved that the order has been duly served upon the defendant. A duplicate of the order, or a copy thereof (the original being shown at the time), should be served personally or left at the defendant's last place of abode (35 & 36 Vict. c. 65, Schd. 2). — Rule 27 (*post*, p. 1089), enabling the constable to free the debtor on payment, does not apply; but as to the issue of a summons instead of a warrant, see *ante*, p. 60. Should the defendant refuse to make payment of the sums due, the justices *may*, and, it is submitted, *must* (cf. *Davies v. Evans (n)*) direct the amount, with the costs attending the issue and execution of the warrant, to be recovered by distress (cf. *ante*, p. 108), and may order the defendant to be detained in custody until return be made to the warrant of distress unless he give proper security. If no sufficient distress can be had, or the defendant admits that he has "no goods," or if the justices consider that the levy of

(*k*) (1881) 7 Q. B. D. 260; 50 L. J. M. C. 124; 45 J. P. 730; 30 W. R. 156.

(*l*) (1883) 11 Q. B. D. 74; 52 L. J. M. C. 87; 47 J. P. 581.

(*m*) (1881) 7 Q. B. D. 264; 50 L. J. M. C. 105; 45 J. P. 372.

(*n*) (1882) 9 Q. B. D. 238; 46 L. T. 418; 46 J. P. 471.

(*o*) (1883) 10 Q. B. D. 454; 52 L. J. M. C. 452.

(*p*) [1891] A. C. 388; 65 L. T. 423; 55 J. P. 628.

distress would be more injurious to him or his family than imprisonment, they may, if they think fit, commit him to prison (*without* hard labour)—for a term not exceeding that fixed by scale (p.111) —for nonpayment of the amount of arrears, unless such amount with the costs incurred be sooner paid (35 & 36 Vict. c. 65, s. 4; 42 & 43 Vict. c. 49, s. 54). A composition or scheme accepted and approved in pursuance of s. 3 of the Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), will not release the debtor from any liability under the order, except to such an extent and under such conditions as the bankruptcy court orders in respect of such liability, nor will an order of discharge release the debtor, except to the same extent (s. 10). The warrant must (if necessary) be backed; but the six months' limitation prescribed by s. 11 of the Summary Jurisdiction Act, 1848, is not applicable to the recovery of arrears under a bastardy order. The defendant, when in prison, is now treated as a debtor, but the imprisonment, if undergone, will operate to satisfy the demand. "It is not necessary," said *Alverstone*, C.J., in *R. v. Richardson*, *infra*, "to express any opinion whether punishment wipes out the arrears, but *my distinct opinion is that it does.*" If the putative father die, the mother cannot recover arrears from his estate (*Harrington, In re; Wilder v. Turner*) (q).

Enforcing
the order—
contd.

P. 1055.

P. 1004.

Some observations of the learned judges in the very recent case of *R. v. Richardson, Ex parte Sherry* (qq), suggest that justices should be careful not to exercise the power of imprisonment oppressively when enforcing payment of arrears due upon orders made under the Summary Jurisdiction (Married Women) Act, 1895. This would apply also to arrears due upon orders for maintenance at industrial or reformatory schools, and, *a fortiori*, to bastardy arrears as there is no power to revoke or vary a bastardy order. "Once an order is made," said *Alverstone*, C.J., "there is no enquiry as to means when an application is made to enforce it. It would be strange if a man was to be sent to prison again immediately after coming out, but the magistrates may send him if they think fit. Probably they would not

Note as to
imprisonment
under
bastardy
orders.

(q) [1908] 2 Ch. 687; 78 L. J. Ch. 27; 99 L. T. 723; 25 T. L. R. 3; 72 J. P. 501.

(qq) [1909] 2 K. B. 851; 79 L. J. K. B. 13; 101 L. T. 541; 25 T. L. R. 711; 73 J. P. 434.

Imprisonment
under
Bastardy
Orders—
contd.

make such an order if they regarded the application as blackmailing or was made for the purpose of oppression. *Imprisonment must only be ordered in circumstances in which the justices think that the defendant ought to be punished for non-obedience of the original order.*" "If on an order of commitment being asked for," said *Darling, J.*, "the defendant shows that he has no means, it is not to be supposed that the justices would imprison for non-payment of that which they think the defendant has (*qu.* and has had) no money to pay. I think the magistrates may be trusted not to allow the proceedings to be used for blackmailing just as they may be trusted not to do the same thing in bastardy. *The legislature has given the magistrates power to do this and trusts them not to use that power oppressively*": (See report in J.P.).

As to the execution of such a warrant elsewhere than in England or Wales, see *ante*, p. 54.

Appeal by
putative
father.

The person against whom an order is made may APPEAL against it to quarter sessions subject to the conditions and regulations contained in the Summary Jurisdiction Act, 1879 (*ante*, p. 155). The mother, however, has no corresponding privilege. But she may make a second or further application in case the first has been dismissed for want of corroborative evidence, though not after an appeal against the order has been heard *on its merits* at quarter sessions and there allowed (*R. v. Glynne (r)*; *R. v. May (s)*). The dismissal for want of corroborative evidence is in the nature of a nonsuit, and not necessarily a final decision where the mother can bring forward additional evidence (cf. *R. v. Hall (t)*). But it is to be observed that, in case the application is dismissed and not merely adjourned, the second application is a commencement *de novo*, and this may become very important when considering whether the proceedings have been *commenced in time* (cf. *R. v. Thomas (u)*; *R. v. Robinson (x)*).

Second
application
by mother.

(*r*) (1872) L. R. 7 Q. B. 16; 41 L. J. M. C. 58; 26 L. T. 61.

(*s*) (1880) 5 Q. B. D. 382; 42 L. T. 772.

(*t*) (1887) 57 L. T. 306.

(*u*) (1863) 27 J. P. 694; 8 L. T. N. S. 460.

(*x*) Cited *ante*, p. 299.

Application by Guardians of the Poor.

If a bastard child under the age of thirteen years becomes at any time chargeable to a union, *and the mother has not obtained an order against the putative father*, the guardians may apply to *two justices*, having jurisdiction in the union, in petty sessions for a summons, returnable after six clear days, calling upon the putative father to show cause why he should not contribute to the relief of the child. Proceedings may then be had similar to those on an application by the mother herself, and the court may, upon the *corroborated testimony of the mother*, but not otherwise, make an order upon the putative father to contribute such sum, weekly or otherwise, as may seem fit, towards the relief of the child so long as the child shall continue chargeable (36 Vict. c. 9, s. 5). A child may become "chargeable" and an order obtained by the guardians, *although the mother may have married a man who is able to maintain the child* (*Plymouth Guardians v. Gibbs*) (y). That is to say, where there is dual liability, the statute is not confined in its operation to illegitimate children, who, *in consequence of the inability of some other person* to maintain them, become chargeable to a union or parish. It is to be observed, however, that such an order will cease to be operative (except as to arrears) if either the child cease to be actually in receipt of relief, or the mother obtain an order on her own initiative (36 Vict. c. 9, s. 5). There is power to deal with *costs* as in the case of orders for the payment of money under s. 18 of Jervis' Act (see 39 & 40 Vict. c. 61, s. 24, and *ante*, p. 115). The fact that the guardians failed on such an application would not deprive the mother of her right to make a separate application; but, if within twelve months of the birth, an order were obtained by the guardians and money paid under it, this would not be such a payment as would entitle the mother to apply after the expiration of the twelve months (*ante*, p. 298). An APPEAL lies to quarter sessions against an order obtained by the guardians (36 Vict. c. 9, s. 5).

Application
by guardians
in case
bastard
becomes
chargeable.

P. 1008.

(y) [1903] 1 K. B. 177; 72 L. J. K. B. 33; 87 L. T. 685; 51 W. R. 157; 67 J. P. 61.

Application
by relieving
officer.

If the mother has herself obtained an order in bastardy, and her child becomes chargeable to the union, a relieving officer may be appointed by two justices to receive payments due under the bastardy order, or accruing due during the period of chargeability. The appointment can only be for one year, but it may be renewed by a justice from time to time as occasion may require (35 & 36 Vict. c. 65, s. 7).

BETTING.

Every place used as a *betting-house* within the Betting Act, 1853, is declared (by s. 1) to be a *common nuisance*, and is further (s. 2) to be deemed a *common gaming-house*, within 8 & 9 Vict. c. 109 (see GAMING, *post*, p. 508); but there are also special provisions as to such places, thus:—

Betting Act,
1853.

Owner or
occupier of
house, &c.,
keeping it for
betting with
persons
resorting
thereto.

Option of
trial by
jury.
Penalty.

**Form of Infor-
mation post.**
p. 1220.

(a) Every owner or occupier of a house, office, room, or other place, who *opens, keeps, or uses* the same for the purpose of such owner, &c. (personally or by his agent) or of anyone having the care or management or in any manner conducting the business thereof *betting with persons resorting thereto*, commits an offence (16 & 17 Vict. c. 119, ss. 1, 3).

The defendant, before the charge is entered upon, must be afforded the OPTION OF TRIAL BY JURY (*ante*, p. 63).

PENALTY.—FINE, not exceeding 100*l.* and costs, and in default of distress (s. 8), imprisonment, *with or without hard labour*, according to scale (p. 111).

Or, IMPRISONMENT, with or without hard labour, for not more than SIX MONTHS.

One half the penalty under this statute goes to the informer, the other in aid of the poor rate (s. 9). But in the metropolis there is power under s. 34 of 2 & 3 Vict. c. 71, to deprive the informer of any share in the penalty (*Hawke v. Mackenzie* (No. 3)) (2). APPEAL lies, *post*, p. 324.

The owner or occupier commits a similar offence and is subject to a like penalty if he *opens, keeps, or uses* the place for the purpose of any money or valuable thing being received by or on behalf of such owner, &c., *as or for the*

Owner or
occupier of
house, &c.,
keeping it for
receipt of
money, &c.,
as deposit on
bets.

(c) 1902 2 K. B. 234; 71 L. J. K. B. 570; 87 L. T. 131; 66 J. P. 712.

consideration for any assurance, undertaking, promise or agreement, express or implied, to pay or give thereafter any money or valuable thing on any event or contingency of or relating to any horse-race, or other race, fight, game, sport, or exercise, or as or for the consideration for securing the paying or giving by some other person of any money or valuable thing on any such event or contingency (16 & 17 Vict. c. 119, ss. 1, 3).

It will be seen that the purposes referred to are distinct, and that *two* distinct offences are created, viz. : opening, keeping or using places for the purpose of (i.) betting with persons resorting thereto, and (ii.) receiving money, &c., as deposit on bets (*Bond v. Plumb*) (a).

Where a newspaper office was used for the purpose of a coupon competition and sums were received there by the defendant, who paid prizes to the successful competitors, it was held that the defendant was properly convicted of keeping a place "for the purpose of money being received by him as the consideration of a promise to pay money on the event of a horse-race." It was contended that the section must be read as being confined strictly to "betting transactions," but, said *Alverstone, C.J.*, "the framers of the statute thought there might be some transactions which might not strictly be called bets and yet would involve the promise of individuals to pay a sum of money on an event or contingency relating to a horse-race . . . the section mentions both betting and also these other transactions" (*R. v. Stoddart*) (b). And such transactions were held to fall within the Act even when the coupons and remittances, in the form of postal orders, were sent to the defendant at an address in Holland, inasmuch as the issue of the coupons appended to the newspapers, which was an essential part of the transaction of the receipt of money, took place at the newspaper office (*Stoddart v. Hawke*) (c).

Coupon
competitions.

"The section prohibits the keeping of a house for the purpose of the receipt of money *wherever* that receipt may be, and it would defeat the obvious intention of the

(a) [1894] 1 Q. B. 169; 70 L. T. 405; 58 J. P. 168.

(b) [1901] 1 Q. B. 177; 70 L. J. Q. B. 189; 17 T. L. R. 55; 64 J. P. 774.

(c) [1902] 1 K. B. 353; 71 L. J. K. B. 133; 18 T. L. R. 23; 66 J. P. 68.

legislature if after, for the purpose of any money . . . being received, we were to read 'at that house'" (per *Alverstone*, C.J.). And this view was adopted by the Court of Appeal in the somewhat later case of *Lennox v. Stoddart* (d).

Person (other than owner or occupier) using place for betting purposes.

Any person (although he be neither owner nor occupier) is similarly liable if he opens, keeps, or *uses* the place for *either of the purposes* above referred to (i.e., betting on credit or by way of ready money). But according to the decision of the majority in *Powell v. Kempton Park Racecourse Co.* (e), the statute attaches liability to such persons only as are "*in control and occupation of the place* which is assumed to be the betting establishment." The employment of the word "use" in the statute imports "the character of the use as a use by some person having the dominion and control over the place and conducting the business of a betting establishment with the persons resorting thereto" ([1899] A. C. at p. 160). It must be proved that the defendant has used the place in the character of *owner, keeper, manager, or conductor of the business* thereof.

Liability of person having care or management of business of a betting-house, &c.

Form of Information, post, p. 1221.

And, so, *any person* is similarly liable who has the *care or management* of, or in any manner assists in conducting, the *business* of a place opened, kept, or used for either of the purposes aforesaid (16 & 17 Vict. c. 119, ss. 1, 3). But if the "business" carried on were lawful as, e.g., the holding of bicycle races (although the inclosure or place might be frequented by betting men and used by them for the purpose of betting), a person having the *care or management*, or assisting in the conduct, of the *business* would not be liable; for "the Act was not intended to apply to any person having the *care or management of a lawful business*, who takes no share or part in any illegality there" (*R. v. Cook*) (f).

Owner or occupier permitting unlawful user.

Form of Information, post, p. 1220.

Moreover, the *owner or occupier* of any such house, office, room or other place is guilty of a similar offence if he *knowingly and wilfully permits* the same to be *opened, kept, or used* by any other person for either of the purposes already mentioned (s. 3). Where the manager of a

(d) [1902] 2 K. B. 21; 71 L. J. K. B. 747; 66 J. P. 469.

(e) *Post*, pp. 314, 318.

(f) (1884) 13 Q. B. D. 377; 51 L. T. 21; 32 W. R. 796; 48 J. P. 694.

football coupon competition advertised in a newspaper and caused the coupons and remittances to be sent to him at an address in Holland (as in *Stoddart v. Hawke* (g)), it was held, on an express finding of the fact by the magistrate, that the registered proprietor of the newspaper "knowingly and wilfully permitted" his office to be used for the purpose of money being received as the consideration of a promise to pay money on the event of a game (*Mackenzie v. Hawke*) (h).

As to the words "house office room or other place," it has been held that "other place" includes any fixed and ascertained spot at which the bettor may be found and which is used for such purpose as is referred to in the Act, as, e.g., a plot of ground on a racecourse on which was erected an uncovered wooden structure five feet high fronting two ways, one to the course, the other to the inclosure (*Shaw v. Morley*) (i); a place on a racecourse identified only by a stool two feet six inches high and a large umbrella fixed into the ground with a spike (*Bows v. Fenwick*) (k); a similar spot identified only by a loose wooden box on which the bookmaker stood (*Galloway v. Maries*) (l); a spot uninclosed and in front undefined, being a billsticker's hoarding supported at two points by stays of timber and quite open in front, forming a protected bay for the betting man (*Liddell v. Lofthouse*) (m); a particular part of a piece of vacant ground to which the public were allowed free access (*McInaney v. Hildreth*) (n); an archway through which persons passed from a street to an adjoining private yard containing a few private houses (*R. v. Humphrey*) (o); a box or stool on which the defendant stood, hard by a temporary cane

Meaning of
"other place."

Cf. *post*,
p. 319.

(g) *Ante*, p. 311.

(h) [1902] 2 K. B. 216; 71 L. J. K. B. 561; 66 J. P. 696.

(i) (1868) L. R. 3 Ex. 137; 37 L. J. M. C. 105; 19 L. T. 15.

(k) (1874) L. R. 9 C. P. 339; 30 L. T. 504; 22 W. R. 804; 38 J. P. 440.

(l) (1882) 8 Q. B. D. 275; 51 L. J. M. C. 53; 45 L. T. 763; 46 J. P. 326.

(m) [1896] 1 Q. B. 295; 65 L. J. M. C. 64; 60 J. P. 264; 12 T. L. R. 204.

(n) [1897] 1 Q. B. 600; 66 L. J. Q. B. 376; 76 L. T. 463; 61 J. P. 325; 13 T. L. R. 284.

(o) [1898] 1 Q. B. 875; 67 L. J. Q. B. 534; 78 L. T. 360; 46 W. R. 543; 62 J. P. 409.

Meaning of
"other place"
—*contd.*

structure bearing an advertisement indicating that the defendant might be found there by those who desired to bet with him (*Brown v. Patch*) (*p*).

Some members of the Court of Appeal declared that the inclosure on Kempton Park racecourse could not, under any circumstances, be a "place," *Lopes*, L.J., observing: "I say without hesitation that this inclosure is not a place within the meaning of the Act" ([1898] 2 Q. B. at p. 268), and again, "I cannot think that a place so unlike a house, office or room as this inclosure can have been contemplated by the Act" (at p. 267; and see per *Lindley*, L.J., at p. 262). This view does not, however, appear to have been supported by any member of the House of Lords; *Halsbury*, L.C., said: "I think in this respect with *Rigby*, L.J., that any place which is sufficiently definite and in which a betting establishment might be conducted would satisfy the words of the statute" ([1899] A. C. at p. 162); while *Lord James* said: "The whole of Epsom Downs or any other racecourse where betting takes place would not constitute a place; but directly a definite localization of the business of betting is effected, be it under a tent or even a movable umbrella, it may well be held that a 'place' exists for the purpose of a conviction under the Act. If this view be correct, I think that the inclosure existing at Kempton Park might, physically speaking, under certain conditions constitute a 'place' within the meaning of the first and second sections of the Act of 1853" ([1899] A. C. at p. 194).

Meaning of
"resort."

The word "resort" is used in the statute in its ordinary sense, so that, where no one had gone to the house for the purpose of betting although persons had gone there for the purpose of making payments (the bets being made by letter or telegram), it was held that a conviction for keeping the house for the purpose of betting with persons "resorting" thereto could not be sustained (*R. v. Brown*) (*q*).

Extent and
character of
user.

It is not necessary that the user for betting purposes should be frequent or continuous, nor that the defendant

(*p*) [1899] 1 Q. B. 892; 68 L. J. Q. B. 588; 80 L. T. 716; 47 W. R. 623; 63 J. P. 421.

(*q*) [1895] 1 Q. B. 119; 64 L. J. M. C. 1; 72 L. T. 22; 59 J. P. 485.

should be a *professional* bookmaker. "I cannot doubt that if the prohibited thing is done . . . by a person who does it for the first time in his life, he is just as amenable to the law as though he had been for many years in the practice of it. Let a man *open a house for such a purpose*, and though he never in fact made a bet or received a deposit, though the proof might be difficult, yet the offence, if proved, would be consummated" (per *Halsbury*, L.C. [1899] A. C. at p. 164). But the mere fact that a bookmaker made *one* bet in his house is not, in itself, enough to attach to the house the character of a "betting establishment" (see *McConnell v. Brennan* (qq)).

SEE also *Jayes v. Harris*, *post*, p. 626.

The payment of a bet made and lost is not "betting"; and it has, accordingly, been held that the user by a bookmaker of the bar of a public-house for the mere purpose of receiving such payments, is not within the Act at all (*Bradford v. Dawson*) (r). But frequenting, or loitering in, a street or public place for the purpose of settling bets is now an offence (see the "Street Betting Act, 1906," *post*, p. 325).

Payment of a bet not betting.

(b) Every such owner, occupier, manager, or assistant also commits an offence if he *receives*, directly or indirectly, any money or valuable thing *as a deposit* on any bet connected with any race, fight, game, sport, or exercise; or, under an agreement to pay any money or valuable thing thereafter, on the event of any such race, fight, game, sport, or exercise (16 & 17 Vict. c. 119, s. 4).

Owner, occupier, &c., of betting-house receiving deposits, &c.

So, too, it is an offence for any person to give any *acknowledgment or security* for any money or valuable thing so deposited, *entitling any person to receive* any money or valuable thing on the happening of any such event (*ib.*).

But, so far as stakes or deposits are concerned, the Act does not extend to a stake or deposit holder who receives or holds stakes or deposits to be paid to the winner of a race or lawful sport, game, or exercise, or to the owner of a horse engaged in a race (s. 6).

Promoting a "sweepstake" on a horse-race is not

"Sweepstakes."

(qq) [1908] 2 Ir. R. 411.

(r) [1897] 1 Q. B. 307; 66 L. J. Q. B. 191; 76 L. T. 54; 45 W. R. 347; 61 J. P. 134.

within this Act (*R. v. Hobbs*) (s). Such a "sweepstake" was held not to be within the section, because, (i.) the person prosecuted was not a person who had entered into any contractual liability towards the subscribers; and (ii.) the contingency upon which the money was to be paid was not a contingency relating to a horse-race but a contingency relating to a drawing (see per *Kennedy, J.*, in *R. v. Stoddart* (t); and see title "LOTTERY," *post*, p. 676). This section (s. 4) is merely ancillary to and forms a new remedy in respect of the *same class of transactions* which are made the subject of penal enactment by the earlier sections (per *Halsbury, L.C.* [1899] A. C. at p. 165).

Penalty.

PENALTY.—FINE, not exceeding 50*l.*, and costs, and, in default of *distress* (s. 8), imprisonment, with or without hard labour, according to scale (p. 111);

Or, IMPRISONMENT, with or without hard labour, for not more than THREE MONTHS.

APPEAL lies, *post*, p. 324.

Advertising
place as open
for betting
purposes.
Cf. post,
p. 323.

(c) It is, further, an offence to *exhibit or publish*, or cause to be exhibited or published, *any placard, card, advertisement, &c.*, indicating that any house, office, room, or place is opened, kept, or used for the purpose of making bets or wagers in manner aforesaid, or for the purpose of exhibiting lists for betting, or of inducing persons to resort to such place to make such bets or wagers. So, too, every person commits an offence who, on behalf of the owner or occupier of such a place, or of anyone using the same, invites persons to resort thereto for the purpose of making such bets or wagers (16 & 17 Vict. c. 119, s. 7).

Penalty.

PENALTY.—FINE, not exceeding 30*l.* and costs, and, in default of *distress* (s. 8), imprisonment, with or without hard labour, according to scale (p. 111), but possibly not exceeding two months;

Or, IMPRISONMENT, with or without hard labour, for not more than TWO MONTHS.

APPEAL lies, *post*, p. 324.

A coupon competition, such as that referred to in

(s) [1898] 2 Q. B. 647; 67 L. J. Q. B. 928; 79 L. T. 160; 62 J. P. 551.

(t) [1901] 1 Q. B. at p. 186.

R. v. Stoddart (u), is a scheme whereby "money is received as the consideration for a promise to pay money on the event of a game," and, if an advertisement is published from which it appears that an office is used for the purpose of such a competition, an offence is committed within this section (*Hawke v. Mackenzie*) (x).

But it must appear, *by reasonable inference from the advertisement itself*, that it refers to one of the two classes of betting transactions prohibited or rendered illegal by s. 1 of the Act (*Ashley v. Hawke*) (y). See *ante*, p. 311.

The Act does not, of course, apply to a man who merely walks about a field and bets with other persons but does not exercise the business of a bookmaker upon any ascertained piece of ground (*Snow v. Hill*) (z). An entirely different question arises, however, where bookmakers (although not employing any such apparatus as a desk, stool, umbrella, or tent) *use a fixed and ascertained place, as, e.g., an inclosure on a racecourse*, for the purpose of carrying on the practice of betting with other persons resorting to the inclosure. Professional bookmakers and the general public are alike admitted, indiscriminately, to such an inclosure (commonly known as the Ring) on making the required payment; the bookmaker not confining himself to any fixed spot, though any particular bookmaker is usually to be found in or near the same part of the Ring. By the considered and unanimous decision of a divisional court, consisting of five judges, it was held that, under such circumstances, one of the bookmakers was properly convicted of *using the inclosure* for the purpose of betting (*Hawke v. Dunn*) (a).

It would obviously follow from this decision that owners of a racecourse, who *knowingly and wilfully permit* such bookmaker to carry on his calling in the inclosure, sin against the Act equally with the bookmaker. But, in an action against the owners and occupiers of a racecourse, the Court of Appeal (*Rigby*, L.J.,

What cases
are within
the Act.

Betting
"Ring."

*Hawke v.
Dunn.*

Effect of
decision in
*Hawke v.
Dunn.*

(u) *Ante*, p. 311.

(x) [1902] 2 K. B. 225; 71 L. J. K. B. 565; 87 L. T. 127; 66 J. P. 709.

(y) (1903) 89 L. T. 538; 67 J. P. 361; 20 Cox, 558.

(z) (1885) 14 Q. B. D. 588; 54 L. J. M. C. 95; 52 L. T. 859; 49 J. P. 440.

(a) [1897] 1 Q. B. 579; 45 W. R. 359; 66 L. J. Q. B. 364; 76 L. T. 355; 61 J. P. 292.

diss.) disapproved of the decision in *Hawke v. Dunn*, and held that such an inclosure, used in the manner already indicated, did not come within the provisions of the Betting Act (*Powell v. Kempton Park Racecourse Co.*) (*b*).

Powell v.
Kempton
Park Race-
course Co.

For the various and varying grounds of this decision, it is impossible to do more than refer the reader to the judgments of the majority of the court. On appeal to the House of Lords (*bb*), that House distinctly overruled *Hawke v. Dunn* on the ground, apparently, that each betting man was himself conducting his own business of a betting man, and his betting was *in no way connected with the place*, except that he as well as other people not betting men were there (see per *Halsbury*, L.C. [1899] A. C. at p. 160). The House, accordingly, affirmed the decision of the Court of Appeal, not, however, on the ground that the inclosure could not be a "place," but on the ground that it is not an offence under the Act to allow persons to assemble for the purpose of betting with each other. "The owner or occupier has no interest in any bet, and is in no way concerned with any bet, and the transactions described in the case are in no sense bets with the owner or occupier of the place in question. They are bets *inter se* by a great many people who resort to the place but have no relation at all to the owner or occupier thereof" (p. 159). Again, "There is no such *betting establishment* as is aimed at by the legislature, and no keeper, owner, &c., who bets with anyone" (p. 160).

Effect of
judgment on
earlier cases.

It is difficult to say how far the judgments in *Powell v. Kempton Park Racecourse Co.* affect the authority of the earlier cases. As to *Eastwood v. Miller* (*c*), where the defendant was the occupier of a large field used for a pigeon-shooting match at which betting took place, *Esher*, M.R., says it "was wrong"; *Lindley*, L.J., that it "went too far"; *Chitty*, L.J., that it "carried the statute beyond its true limit." As to *Galloway v. Maries* (the case of a betting man standing on a loose wooden box to bet), *Esher*, M.R., says that it "was wrongly

(*b*) [1897] 2 Q. B. 242; 77 L. T. 2; 66 L. J. Q. B. 60; 61 J. P. 548.

(*bb*) [1899] A. C. 143; 68 L. J. Q. B. 392; 80 L. T. 538; 63 J. P. 260.

(*c*) (1874) L. R. 9 Q. B. 440; 43 L. J. M. C. 139.

decided"; *Chitty*, L.J., that it "is open to question"; *Smith*, L.J., that it "went too far"; while *Lindley*, L.J., is not prepared to say that it was "decided on any erroneous principle." As to *Haigh v. Sheffield Corporation* (*d*), where the defendant was the occupying tenant of a ground used for cricket, foot-races, &c., at which bookmakers attended and made bets, *Chitty*, L.J., says that it "carried the statute beyond its true limit"; and *Smith*, L.J., seems to disagree with the *ratio decidendi*, while *Lindley*, L.J., thinks that on the particular facts it may be supported.

In the House of Lords these earlier cases are thoroughly examined in the exhaustive judgments of the dissentient Lords (*Lords Hobhouse and Davey*), but the judgment concurred in by the majority does not contain mention of any one of the numerous cases decided within the thirty years preceding *Hawke v. Dunn*. It seems obvious, however, that this decision overrules *Eastwood v. Miller* and *Haigh v. Sheffield Corporation*, and this view is definitely expressed by *Lord James* at p. 197; but the decision in *Galloway v. Maries* does not appear to be altogether inconsistent with the grounds of the judgment of the ultimate court in *The Kempton Park Case*. *Lord Davey* points out (p. 183) that *Liddell v. Lofthouse* (*e*) cannot stand with the decision of the Court of Appeal; it does not, however, appear to conflict with the judgment as pronounced in the House of Lords.

The decision in *The Kempton Park Case* renders it very difficult to apply the law to that class of cases in which the bar or tap-room of a public-house has been used by a man, other than the occupier, for the purpose of betting. The difficulty is, perhaps, not so great when the occupier of the licensed premises is himself privy to, and connives in, the user of the bar by the betting man; as *e.g.*, in *Hornsby v. Raggett* (*f*) and in *Belton v. Busby* (*g*), where the court seem to have arrived at the conclusion that the publican knowingly permitted a betting man to have the control of a ready-money betting business

Betting on
licensed
premises.

(*d*) (1875) L. R. 10 Q. B. 102; 44 L. J. M. C. 7.

(*e*) *Ante*, p. 313.

(*f*) Cited *post*, p. 626.

(*g*) [1899] 2 Q. B. 380; 68 L. J. Q. B. 859; 81 L. T. 196; 47 W. R. 636; 63 J. P. 709.

Betting on
licensed
premises—
contd.

carried on in a room of the licensed premises. But, in view of the principles enunciated in *The Kempton Park Case*, it is by no means easy to support the conviction of a betting man who occasionally uses licensed premises for betting purposes. See, *e.g.*, *MacWilliam v. Dawson* (h), in which the bookmaker was convicted, although it was expressly found that he "had no exclusive occupation of the private bar or any specific part of it," and again, that "the bar was open to the public and any person might obtain refreshment without betting." *Smith, L.J.*, who was a party to this decision, explained, in his judgment in *Powell v. Kempton Park, &c.*, that he did not "propose to deal" with this class of case because (said he) "the words 'house and room' are specifically mentioned in the Act as two of the prohibited places when used by a betting man for the carrying on of the business of betting therein, and in my judgment, these cases have no application to betting in an inclosure at a racecourse in the usual way." But, as we have seen, the majority in the House of Lords did not rest their judgment on this restricted view of the meaning of the word "place"; and it seems difficult to understand how, under the circumstances of the case, the defendant in *MacWilliam v. Dawson* could be held to be a person "in control and occupation of the place which is assumed to be the betting establishment," and so come within the decision of the majority in the House of Lords.

In view of more recent decisions, the guilt of the bookmaker would seem to depend on the knowledge and acquiescence of the licence-holder—"In the absence of sufficient localization," said *Alverstone, C.J.* "the permission of the owner is most material." If the place is one to which persons have common access for purposes other than that of betting, and if the defendant was neither in law nor in fact in possession of it, there must be evidence that the owner of the place authorized something to be done which he need not have permitted (*R. v. Dearville*) (i). But, where a ready-money betting business was carried on in the bar under an arrangement with the

(h) Cited *post*, p. 627.

(i) [1903] 1 K. B. 468; 72 L. J. K. B. 272; 88 L. T. 32; 51 W. R. 604; 67 J. P. 82.

landlord, it was held that the *bookmaker* was rightly convicted of "using" the bar, although he had no interest in the licensed premises (*Tromans v. Hodgkinson*) (*k*). And, if it were proved that the *occupier* of the house had been present on several occasions and could have seen what was going on, this would be evidence on which *he* might be convicted of permitting the house to be used for the purpose of a person using it betting with persons resorting thereto (*R. v. Deaville*) (*l*). Indeed, in *Burton v. Scott* (*ll*), the court went so far as to uphold the conviction of a *bookmaker* who had used the house with the knowledge and connivance of the *son of the licensee*. This decision was apparently rested on the ground that, as the son was in fact assisting in conducting the business of the house, he was clothed with the licensee's authority and could give permission to the betting man so to use the premises. In this case the son also was convicted of "aiding and abetting."

Betting on
licensed
premises—
contd.

As to proceedings against the *licence-holder* under the *Licensing Acts* for permitting gaming, see *post*, p. 624.

Reference may be made to an earlier case, where the defendant on three several dates was in the bar of a public-house, and persons came in, took slips of paper that were hanging on the wall, wrote on the slips the names of the horses they wished to back, and handed the slips, with their stakes wrapped up therein, to the defendant. The defendant on one day received *in the bar* two slips containing money, but, as a rule, he went outside and received the slips and money on the doorstep of the house. It was held that there was evidence to go to the jury that the defendant had *used the bar* for the purpose of betting with persons resorting thereto on each of the three dates (*R. v. Worton*) (*m*). In the still earlier case of *Whitehurst v. Fincher* (*n*), the defendant, who had gone into the bar of a public-house on three consecutive days and made bets there, was acquitted, apparently on the ground that there was no *designed or systematic* use of

(*k*) [1903] 1 K. B. 30; 72 L. J. K. B. 21; 87 L. T. 549; 51 W. R. 286; 67 J. P. 30.

(*l*) *Ante*, p. 320.

(*ll*) (1909) 100 L. T. 390; 25 T. L. R. 239; 73 J. P. 133.

(*m*) [1895] 1 Q. B. 227; 64 L. J. Q. B. 74; 39 S. J. 115.

(*n*) (1890) 17 Cox, C. C. 70.

the place, and that the defendant was not a *professional* bookmaker. But, as to the insufficiency of these grounds, standing alone, to distinguish this case from the decisions in the cases before referred to, see per *Halsbury*, L.C., *ante*, p. 315, and *post*, p. 323.

Evidence
of previous
transactions.

As to the *evidence* which may be received in cases of this class, reference must be made to the decision in *R. v. Mean (o)*. The defendant was arrested in the *bar* of a public-house on November 13th, and it was held that the prosecution was entitled to prove (i.) that betting slips, similar to slips found on the defendant and to some found in the *parlour* of the house on November 13th, had frequently been received from customers by the landlord and by him forwarded to the defendant; and (ii.) that slips found on the defendant were an epitome of slips received by him from the landlord on dates prior to November 13th.

Betting in
clubs or
private
houses.

A *bonâ fide* club in which the members bet amongst themselves is not within the Act (*Oldham v. Ramsden (p)*); *Downes v. Johnson (q)*). And, indeed, it has been laid down as a general proposition that "it cannot be contended that owning, occupying, keeping, or using a place for persons betting therein *inter se* is any offence within the Act" (per *Smith*, L.J., in *Powell v. Kempton Park Racecourse Co. (r)*). Again, "A man who bets or allows betting in his *private house*, or the man who, associating with his fellows in a club, *even a sporting club*, there bets upon races, is guilty of no illegal act. In such cases the ingredient of *dedication or appropriation of the place to the purposes of a betting business* is absent" (per *Lord James*, [1899] A. C. at p. 196).

Procedure.

On complaint being made on oath that there is reason to suspect that premises are being used for the purpose of betting in contravention of the Act, a justice may issue a warrant, authorizing the entry of the premises by force, the arrest of all persons found therein, and the seizure of documents relating to racing or betting (16 & 17 Vict. c. 119, s. 11). If, however, proceedings are

(o) (1904) 69 J. P. 27; 21 T. L. R. 172.

(p) (1875) 44 L. J. C. P. 309; 32 L. T. 825.

(q) [1895] 2 Q. B. 203; 59 J. P. 325.

(r) *Ante*, p. 318.

taken against the persons arrested under the warrant, such persons would be entitled to require that informations should be laid in the ordinary course (cf. *Anderson v. Hume* (s); *Blake v. Beach* (t)). As the place is to be "deemed a common gaming-house" (*ante*, p. 310), it follows that the court has power to require recognizances from any persons so arrested not to haunt such places (*Murphy v. Arrow*) (u). In *The Kempton Park Case* it was said: "Neither this section nor the Act prohibits persons *other than professional betting men* resorting to betting-houses for the purpose of betting therein, though if found therein they are liable to arrest and search and to be taken before a justice of the peace" (per *Smith*, L.J.). As to the distinction here sought to be drawn between the different classes of bettors, *Halsbury*, L.C., says, however, "All people who bet for money mean to win money, and whether it is for the sake of a living or for the sake of adding to money which the bettor already possesses seems to me an altogether illusory distinction" ([1899] A. C. at p. 161). In case the informant does not appear at the hearing, or if the justices are of opinion that he has not prosecuted the matter with due diligence, the justices may authorize any other person to proceed in place of the informant, or they may issue a fresh summons (s. 10).

Arrest of persons found on premises.

It should be added that as every house or place kept or used as a betting-house is a "gaming-house" within 8 & 9 Vict. c. 109, it is presumed that the provisions as to obstructing the entry of constables, giving false names, &c., will be applicable (see *post*, p. 512).

APPEAL against a conviction lies to quarter sessions (16 & 17 Vict. c. 119, s. 13).

Appeal.

Everyone commits an offence who *sends, exhibits, or publishes*, or causes to be sent, exhibited, or published, *any letter, telegram, advertisement, &c.*, (a) whereby it is made to appear that anyone will, on application, give *information or advice*, with respect to any such bet or wager as is made penal under the Betting Act, 1853, or will make

BETTING ACT, 1874.
Publishing advertisements inviting betting.

(s) (1882) 46 J. P. 825.

(t) *Ante*, p. 31.

(u) [1897] 2 Q. B. 527; 66 L. J. Q. B. 865; 77 L. T. 435; 46 W. R. 94; 62 J. P. 38 (and see *post*, p. 509).

Advertising
betting.

any such bet or wager on behalf of another person; or (β), with intent to induce anyone to apply for such information or advice; or (γ), inviting anyone to take part in such bet or wager (37 Vict. c. 15, s. 3).

It will be observed that the last cited statute is directed only against such bets and wagers as are made penal by the earlier Act, that is to say, such as are made in houses or places kept or used for the purpose of betting or wagering (*Cox v. Andrews*) (*v*). It was held, accordingly, that it was not an offence to advertise or issue books containing coupons, to be filled up with the names of horses about to run in races, although it was announced that prizes would be given to those persons who named the winners (cf. *Caminada v. Hutton*) (*x*). But a coupon competition, such as that referred to in *R. v. Stoddart* (*y*), has now been held to be a scheme whereby, through the medium of an office, "money is received as the consideration for a promise to pay money in the event of a game," and any person, who advertises that he will give advice or information as to such a competition, is guilty of an offence (*Hawke v. Mackenzie*) (*z*¹). *Caminada v. Hutton* has been distinguished from the later cases on the ground that, *prima facie*, the consideration for which the purchaser of the newspaper paid his money was the newspaper itself, and *there was no finding that it was in fact paid for the purpose of getting the benefit of the coupon* (per *Alverstone, C.J.*, in *R. v. Stoddart*) (*y*).

Penalty.

PENALTY.—FINE, not exceeding 30*l.* and costs, and, in default of *distress*, imprisonment, with or without hard labour, according to scale (p. 111), but possibly not for a term longer than two months; or,

IMPRISONMENT, with or without hard labour, for not more than TWO MONTHS.

APPEAL lies (*ib.*, s. 1; 16 & 17 Vict. c. 119, s. 13).

BETTING
AND LOANS
(INFANTS)
ACT, 1892.

Every person commits a misdemeanour who, with a view to commission or *profit*, causes to be sent to an *infant* any circular, notice, &c., *inviting him to make any*

(*v*) (1884) 12 Q. B. D. 126; 53 L. J. M. C. 34; 48 J. P. 247.

(*x*) 60 L. J. M. C. 116; 64 L. T. 572; 55 J. P. 727.

(*y*) *Ante*, p. 311.

(*z*¹) [1902] 2 K. B. 225; 71 L. J. K. B. 565; 87 L. T. 127; 66 J. P. 709.

bet or wager, or to enter into any betting or wagering transaction, or to apply for information or advice for the purpose of a bet or wager, or as to any race, fight, &c., in respect of which betting or wagering is generally carried on. It must appear that the accused *knew* that the recipient of the circular, &c., was an infant, but it will be presumed (in the absence of proof that the accused had reasonable ground for believing the contrary) that he had such knowledge, if the circular, &c., was sent to the infant when at the university, or at school or college (55 Vict. c. 4, ss. 1, 3).

Inviting infants to bet or wager.

As to proof of the sending of the circular, &c., see s. 1 (ii.); in the absence of proof to the contrary, the person to whom payment may be made or from whom information may be obtained will be deemed to have sent the document.

PENALTY.—(ON INDICTMENT)—*Fine*, not exceeding 100*l.*; Penalty.

Or, Imprisonment, with or without hard labour, for not more than *three months*; or both.

(ON SUMMARY CONVICTION)—*Fine*, not exceeding 20*l.*, and, in default of *distress*, imprisonment according to scale (p. 111), but possibly not exceeding one month;

Or, Imprisonment, with or without hard labour, for not more than *one month*; or both.

Similar provisions prohibiting the inviting of infants to borrow money, or to make declarations in connection with loans, are contained in ss. 2, 4; while s. 5 of the Money Lenders Act, 1900 (63 & 64 Vict. c. 51) provides that the defendant shall be *presumed* to have known the person to whom the invitation was sent to be an infant, unless he proves that he had reasonable ground for believing the contrary.

Inviting infants to borrow.

Everyone who *frequents* or *loiters* in a *street* or *public place*, on behalf either of himself or of any other person, for the purpose of *bookmaking*, or *betting*, or *wagering*, or agreeing to bet or wager, or paying or receiving or *settling bets* commits an offence (6 Edw. 7, c. 43, s. 1). Where a bye-law prohibited the *frequenting* of a public place for the purpose of betting, a Divisional court is reported to have held that “frequenting” merely meant being sufficiently long in the place to effect the object aimed at, namely, to bet (*Airton v. Scott*) (2^d). But, in *Clark v.*

BETTING IN A STREET OR PUBLIC PLACE.
6 EDW. 7, C. 43 (STREET BETTING ACT, 1906).

Form of Information,
post, p. 1229.
Cf. *Stenhouse v. Dykes*,
cited p. 327.

(2^d) (1908) 100 L. T. 393; 25 T. L. R. 250; 73 J. P. 148.

"Frequent-
ing."

The Queen (z³), while allowing that what amounts to a "frequenting" of a street must depend upon the circumstances of each particular case, *Hawkins, J.*, added: "I can only say that *one* visit to it does not"; and *Grove, J.*, said: "A single visit to a place, or once passing through a street, can in no sense be said to be a 'frequenting' that place or street."

"Street."

"Street" includes any *highway* and any *public* bridge, road, lane, footway, square, court, alley, or passage, whether a thoroughfare or not. A Scotch court held that a passage to which the public had no right of access, but could gain access owing to the lock of a door being broken, and leading directly to a court which gave access to at least one common stair, was not a "public passage" (*Hasson v. Neilson*) (z⁴).

"Public
place."

"Public place" includes any public park, garden, or sea-beach, and any *uninclosed* ground to which the public for the time being have *unrestricted* access.

The term "public place" also includes any *inclosed* place (not being a public park or garden) to which the public have a *restricted* right of access, whether on payment or otherwise, *if*, at or near *every* public entrance there is conspicuously exhibited by the owners or persons having the control of the place a *notice prohibiting betting* therein.

Decisions on
the Act.

The court directed a conviction under this Act where a defendant loitered in a street for the purpose of distributing papers, which contained an offer by a third person to give certain odds, and a form to be filled up by any one wishing to bet. The form, with a postal order in payment of the commission, was to be sent to the third person in Holland (*Dunning v. Swetman*) (z⁵). The charge was loitering "for the purpose of betting"; and the decision appears to be based on the view that the defendant "was doing that which was a *substantial part of the business of betting*, namely, giving a man who was invited to bet information as to the terms upon which the third person would bet, and as to the means

(z³) (1884) 14 Q. B. D. 92; 54 L. J. 66; 33 W. R. 226.

(z⁴) [1908] S. C. (J.) 57.

(z⁵) [1909] 1 K. B. 774; 78 L. J. K. B. 359; 100 L. T. 604; 25 T. L. R. 302; 73 J. P. 191.

by which the bet could be negotiated" (*ib.*, per *Alverstone*, C.J.). A conviction was upheld by a Scotch court where the defendant was charged *in the alternative* with loitering "for the purpose of bookmaking or betting or wagering or agreeing to bet or wager or paying or receiving or settling bets" (*Stenhouse v. Dykes*) (²⁶).

FIRST OFFENCE.—FINE not exceeding 10*l.*, and, in PENALTY. default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111).

SECOND OFFENCE.—FINE not exceeding 20*l.*, recoverable similarly. This, of course, refers to a second offence under this same statute, *R. v. Stone* (²⁷).

THIRD OFFENCE.—FINE not exceeding 30*l.*, recoverable similarly; or IMPRISONMENT, with or without hard labour, for THREE MONTHS.

In the case of a *third* or subsequent offence, the defendant may be prosecuted on *indictment*, when the punishment would be *fine* of 50*l.*, or *imprisonment*, with or without hard labour, for *six months*.

In any case, the defendant is subject to FORFEITURE of all books, cards, papers, and other articles relating to betting found in his possession. A constable may take into custody *without warrant* anyone found committing an offence under the Act, and may seize and detain any article liable to forfeiture (s. 1 (ii.)). Arrest and forfeiture.

If the offence involved a betting transaction with a person under sixteen years of age, the accused will be liable to trial and punishment as for a *third* offence; and anyone who appears to be under sixteen is to be *deemed* to be so unless the *contrary* be proved, or the accused satisfy the court that he had *reasonable ground for believing* otherwise (s. 1 (iii.)). Betting with person under 16.

Nothing in the Act is to apply to any ground used for the purpose of a racecourse for racing with horses or adjacent thereto *on the days on which races take place* (s. 2). Protection for those who bet at race meetings.

And see BYE-LAWS, *post*, p. 355.

(²⁶) [1908] S. C. (J.) 61, Ct. of Just.

(²⁷) (1908) 99 L. T. 88; 72 J. P. 388.

BICYCLES.

The Local Government Act, 1888, provides (51 & 52 Vict. c. 41, s. 85), as follows:—

Bicycles are
carriages
within the
Highway
Acts.

The provisions of s. 26, sub-s. 5, of the Highways and Locomotives Act, 1878, and s. 23, sub-s. 1, of the Municipal Corporations Act, 1882, in so far as it gives power to the council to make bye-laws regulating the use of carriages herein referred to, and all other provisions of any public or private Acts in so far as they give power to any local authority to make bye-laws regulating the use of bicycles, tricycles, velocipedes, and other similar machines, are hereby REPEALED, and *bicycles, tricycles, and velocipedes, and other similar machines*, are hereby declared to be CARRIAGES *within the meaning of the Highways Acts*; and the following additional regulations shall be observed by any person or persons riding or being upon such carriage:—

Additional
regulations.

Forms of
Information,
post, p. 1221.

- (a) During the period between *one hour after sunset and one hour before sunrise*, every person being or riding upon such carriage shall carry attached to such carriage *a lamp*, which shall be so constructed and placed as to exhibit a light in the direction in which he is proceeding, and so lighted and kept lighted as to afford adequate means of signalling the approach or position of the carriage;

and

- (b) upon *overtaking any cart or carriage, or any horse, mule, or other beast of burden, or any foot passenger*, being on or proceeding along the carriage way, every such person shall within a reasonable distance from and before passing such cart or carriage, horse, mule, or other beast of burden, or such foot passenger, *by sounding a bell, whistle, or otherwise*, give audible and sufficient warning of the approach of the carriage.

Penalty for
breach of
regulations.

PENALTY for breach of either (a) or (b) on summary conviction:—FINE, not exceeding 40s., and, in default of *distress*, imprisonment, *without hard labour*, according to scale (p. 111). APPEAL lies (51 & 52 Vict. c. 41, s. 75; 45 & 46 Vict. c. 50, s. 219).

The expressions “sunset” and “sunrise” refer to the

times of actual sunset and sunrise at the particular place on the particular day (*Gordon v. Cann*) (a).

There are several offences against the Highway Acts in respect of which the rider may be apprehended on the spot, as, *e.g.*, furious riding, or (if his name be unknown) riding or leading a bicycle on a footpath by the side of a road (see *DRIVING AND RIDING*, *post*, pp. 420—422, and *HIGHWAYS*, *post*, pp. 535, 536); but there is *no power to apprehend without warrant* a rider who merely commits a breach of the above regulations as to bicycles and other similar machines (*Hatton v. Treeby*) (b).

As to the furious riding of a bicycle whereby *actual bodily harm* is caused, see *post*, p. 421.

Bicycles
—*contd.*

Power to
apprehend.

BIGAMY.

“Whosoever, being married, shall marry any other person during the life of the former husband or wife, whether the second marriage shall have taken place in England, Ireland, or elsewhere,” commits a *felony*, punishable with seven years’ penal servitude (24 & 25 Viet. c. 100, s. 57). The words “or elsewhere” are not to be restricted to the meaning “or elsewhere *within the King’s dominions*” (*R. v. Russell (Earl)*) (c).

Meaning of
bigamy.

It is immaterial where or when the first marriage was celebrated; but it must have been “a monogamous marriage as understood in Christian countries” (Archbold’s “Crim. Pl.,” 23rd ed., p. 1173).

The offence is triable only at assizes; but the offender may be committed and tried in any county or place in England or Ireland *where he is apprehended or is in custody*. The *lawful* husband or wife is not competent to give evidence for the *prosecution*.

It must, of course, be proved by the prosecution that the lawful husband or wife of the accused was alive at the date of the second marriage. If the person who went through the ceremony of the second marriage with the bigamist were aware of the true state of the facts,

Evidence.

(a) (1899) 68 L. J. Q. B. 434; 80 L. T. 20; 47 W. R. 269; 63 J. P. 324.

(b) [1897] 2 Q. B. 452; 77 L. T. 309; 66 L. J. Q. B. 729; 61 J. P. 586.

(c) [1901] A. C. 446; 70 L. J. K. B. 998; 85 L. T. 253.

Evidence—
contd.

such person would be liable as a principal in the second degree (cf. *ante*, p. 150).

Persons may be guilty of this crime, although the *second* marriage was void as, *e.g.*, where a man goes through a form of marriage with a woman within the prohibited degrees of affinity. But there cannot, of course, be any conviction if the *first* alleged marriage was void, as, *e.g.*, if a man, who had gone through the ceremony of marriage with a woman within the prohibited degrees, were during her lifetime to marry another woman. Moreover, an *admission* of a prior marriage seems to be no evidence that it was valid and lawfully solemnised. The fact of the marriage might be proved by production of the original register or of an examined copy, or by production of a certified copy stamped with the seal of the general register office; but it is usually proved by production of a copy purporting to be signed and certified as a true copy by the clergyman or other officer having custody of the original. As to marriages in the Church of Rome, the Greek Church, in Scotland, &c., see Archbold's "Crim. Pl.," 23rd ed., pp. 1171—3. There must also, of course, be evidence of the identity of the parties, which is usually furnished by persons who were present at the ceremony. The Act does not extend to a second marriage contracted elsewhere than in England or Ireland by a person who is not a British subject; but, where the second marriage was contracted abroad, it is *not necessary to aver* in the indictment that the accused is a British subject (*R. v. Audley*) (*d*). Nor does the Act apply to cases in which husband or wife has been continually absent from the other for the preceding *seven years*, if the one charged with the offence has not at any time during that period known that the other was living.

Effect of
absence for
seven years.

When it has been proved that the prisoner was *separated* from his wife for more than seven years before he contracted a second marriage, it rests upon the prosecution to show that the prisoner knew of his wife's existence during the seven years immediately preceding such marriage; and in default of such proof the prisoner is entitled to be acquitted, though the second marriage would

(*d*) [1907] 1 K. B. 383; 76 L. J. K. B. 270; 71 J. P. 101; 23 T. L. R. 211.

of course be a nullity. But, in the absence of affirmative *proof* that the prisoner and his wife *were separated*, there is no burden upon the prosecution to show that he knew of his wife's existence during the seven years immediately preceding the second marriage (*R. v. Jones (e)*). A *bonâ fide* belief on reasonable grounds of the death of the husband at the time of the second marriage has been held to afford a good defence to a charge of bigamy, although it appeared that the defendant had gone through the ceremony of marriage *less than seven years* after she had been deserted by her husband (*R. v. Tolson (f)*). Bigamy
—*cont'd.*

BILLIARDS.

Everyone, *unless he be a licensed victualler*, who desires to keep a billiard or bagatelle table for public play, must take out an annual licence under the Gaming Act, 1845. The licence is granted by the magistrates at the general annual licensing meeting in the same way as an ordinary liquor licence (8 & 9 Vict. c. 109, s. 10; 35 & 36 Vict. c. 94, s. 75). The licence may be transferred at special sessions (see *ante*, p. 14). Billiard
licence.

The holder is bound to print up conspicuously outside his premises the words "licensed for billiards"; and if a man neglect to take out a licence, or, being licensed, neglect to cause these words to be exhibited, he may be convicted of keeping a gaming-house; and he may, too, be proceeded against summarily and fined 10*l.* for each day on which the table was used, or, at the option of the court, imprisoned, with hard labour, for one month (8 & 9 Vict. c. 109, s. 11). Appeal lies (*ib.* s. 20).

All public billiard-rooms must be *closed* between 1 *a.m.* and 8 *a.m.*, and, also, throughout Sunday, Christmas Day, Good Friday, and days of public fast and thanksgiving. It is further to be noted that a *licensed victualler* (although he, *as distinguished from a mere beerhouse keeper*, is not required to take out a billiard licence) must, *in addition*, cause his billiard-room to be closed whenever Closing of all
public
billiard-
rooms.

(*e*) (1883) 11 Q. B. D. 118; 52 L. J. M. C. 96; 47 L. T. 396; 47 J. P. 535; 15 Cox, 284.

(*f*) (1889) 23 Q. B. D. 168; 58 L. J. M. C. 97; 60 L. T. 899; 54 J. P. 4; 16 Cox, 629.

Billiards—
contd.

his premises are *not permitted to be open for the sale of liquor*. Even a lodger on the premises of a licensed victualler may not play after the closing hour has arrived; though in a *beerhouse* (of which the keeper is, as we have seen, required to take out a billiard licence) play may be continued until 1 *a.m.* If *play is allowed* in a public billiard-room during any of these prohibited times, the *penalty* is the same as for keeping a table without a licence (*supra*), or a penalty may be imposed as for suffering gaming on licensed premises (*post*, p. 624; see also p. 621); while the latter penalty may be imposed, if the room be kept open at such times, although no actual play may take place (*ib.* s. 13).

Offences
against the
tenor of the
licence.

The holder of a *billiard licence*, moreover, incurs a penalty as for suffering gaming on licensed premises (*post*, p. 624), if he permits drunkenness, or disorder, or allows the consumption of *excisable* liquors (*i.e.*, for this purpose, spirits), or is guilty of any other offence against the "tenor of the licence" (*ib.* ss. 10, 12). As to refusing admittance to a constable, see s. 14.

Penalties under ss. 10, 12, 13, 14, go to the police pension fund.

BIRDS' PROTECTION.

Offences
under Wild
Birds
Protection
Act, 1880.

The Wild Birds Protection Act, 1880 (43 & 44 Vict. c. 35), provides that any person who *between the 1st of March and the 1st of August* "shall knowingly and wilfully shoot or attempt to shoot, or shall use any boat for the purpose of shooting or causing to be shot, any *wild bird*, or shall use any *lime, trap, snare, net, or other instrument for the purpose of taking any wild bird*, or shall expose or offer for sale, or shall have in his control or possession after the 15th day of March any *wild bird recently killed or taken*," is liable as follows:—

(a) In the case of any wild bird *included in the schedule* (see below, p. 344):—for every such bird in respect of which an offence is committed, to a penalty not exceeding 1*l.*, recoverable before two justices by distress and imprisonment.

(β) In the case of any wild bird *not included in the schedule*:—for a first offence to be reprimanded and discharged on payment of costs. For every

subsequent offence to a penalty not exceeding 5s. for each bird in addition to the costs, recoverable as above(s.3).

The court may, in addition to any penalty, order any trap, net, snare, or decoy bird used for taking the wild bird to be forfeited (59 & 60 Vict. c. 56, s. 4; and see 2 Edw. 7, c. 6, s. 1). Forfeiture.

Offences committed within the jurisdiction of the Admiralty may be alleged to have been committed "on the high seas," and the offender may be dealt with where he is apprehended, or is in custody, or is summoned; while, if the offence be committed on waters forming the boundary of two districts, it may be prosecuted in either district (43 & 44 Vict. c. 35, s. 6; and see *ante*, p. 8). Venue.

On a charge of exposing for sale or having in possession a wild bird *recently taken*, it is incumbent on the prosecution to show that the bird is a wild bird and has been recently taken; but a wild bird is not of necessity not recently taken because it has been in the possession of the defendant for a period of three weeks (*Green v. Carstang (g)*; see also *Hollis v. Young (h)*), in which it was held that, where young larks, with feathers of a light colour, were found, on 30th July, very wild and beating themselves against the bars of their cages, there was *prima facie* evidence that the birds were "recently taken." Exposing for
sale birds
"recently
taken."

The following exemption, inclosed within brackets, is made by the "Wild Birds Protection Act, 1881" (41 & 45 Vict. c. 51): [A person shall not be liable to be convicted under s. 3 (above), of exposing or offering for sale, or having the control or possession of any wild bird *recently killed*, if he satisfies the court either— Exemptions.

(1) that the killing of such bird, if in a place to which the Act extends, *was lawful* at the time when and by the person by whom it was killed; or

(2) that the bird *was killed* in some *place to which the Act does not extend*; and the fact that the bird was imported from some place to which the Act does not extend shall (until the contrary is proved) be evidence that the bird was killed in some such place.]

In the case of *non-scheduled birds* under (3) no penalty

(g) (1901) 85 L. T. 615; 66 J. P. 102.

(h) [1909] 1 K. B. 629; 78 L. J. K. B. 340; 98 L. T. 751; 21 Cox, 582; 72 J. P. 199; 24 T. L. R. 500.

attaches to a *killing or taking*, at any time, by the *owner or occupier* of the land, or by any person authorized by such owner or occupier. This proviso seems to be intended to enable an occupier of land or his agents to destroy birds likely to damage the crops. It does not mean that a man may send birds (although lawfully taken on his own land) to be shot on the land of another, or even on other land in his own occupation (*Warr v. Gilham*) (i).

Refusal to
give name and
address.

Any person *found offending* may be required by any person to give his name and address; and, for refusal or evasion, the offender if convicted may be fined 10s. in addition to any penalty incurred under s. 3 (43 & 44 Vict. c. 35, s. 4).

Destruction
of eggs.

As to the power of the Secretary of State (upon the application of a county council or of the council of a county borough) to extend the schedule and times of restriction, or to prohibit the *destruction of eggs*, see 57 & 58 Vict. c. 24; the powers of the Secretary of State being further extended by 59 & 60 Vict. c. 56. The PENALTY for *each egg* taken or destroyed in violation of the order is a *fine* not exceeding 1l. The council is required to publish the order of the Secretary of State, but it seems that such *publication is not a condition precedent* to proceedings under the Act (*Duncan v. Knill*) (k).

Schedule.

The schedule contains eighty-five names, and embraces most of our ordinary sea birds, the black-backed gull being specially excepted. Among land birds we find the cuckoo, goldfinch, kingfisher, lapwing, nightingale, owl, plover, snipe, teal, tern, widgeon, wild duck, woodcock, and woodpecker. The lark has also been included, by a special clause in the Act of 1881.

ACT OF 1904.
Setting of
traps, &c.

By the Wild Birds Protection Act, 1904 (4 Edw. 7, c. 4), which enacts that it and the earlier statutes are to be construed as one, provision is made to punish the affixing, placing or setting, *on any pole, tree, or cairn of stones or earth*, of any *spring, trap*, or other similar instrument *calculated to cause bodily injury* to any *wild bird* coming in contact therewith. So, also, it is an offence knowingly to cause, permit, or suffer such an instrument to be so placed. The PENALTY is, for a *first offence*, 2l.; for a *second offence*, 5l. The fines are recoverable by *distress*,

(i) (1885) 52 L. T. 326; 49 J. P. 357.

(k) (1907) 96 L. T. 911; 5 L. G. R. 620; 71 J. P. 287.

and, in default, imprisonment *without* hard labour, according to scale (p. 111).

The Wild Birds Protection Act, 1908, renders liable to a like PENALTY, any person who takes or attempts to take any wild bird by means of a *hook or other similar instrument* (8 Edw. 7, c. 11, s. 1).

ACT OF 1908.
Taking by
hook, &c.

BIRTHS AND DEATHS REGISTRATION.

Under the 37 & 38 Vict. c. 88, provision is made with respect to the registration of births and deaths, and the conduct of burials. The following among many other OFFENCES are summarily punishable:—

Registration
of births and
deaths.

- 1 (ss. 1, 39). Parent of child neglecting to give information of particulars of *birth* to the registrar *within forty-two days* (N.B.—All notices, &c., may be sent by post). Parent, occupier of house, person present at birth or having charge of child, failing to comply with registrar's requisitions. (40s.)

OFFENCES.

Where the "Notification of Births Act, 1907" has been adopted or declared by the Local Government Board to be in force, there are *additional* requirements as to notification. Unless such person has reasonable grounds for believing that notice has been duly given by another, the father (if actually residing in the house at the time) and the attendant on the mother (at the time of, or within six hours after, the birth) must give the prescribed notice to the medical officer of health *within thirty-six hours*, under a PENALTY of 20s. (7 Edw. 7, c. 40, s. 1). This Act applies to all children born (alive or dead) after the 28th week; and the notice may be sent by post to, or delivered at, the office or residence of the medical officer. Doctors and midwives are to be supplied with stamped and addressed postcards without charge.

- 2 (37 & 38 Vict. c. 88, ss. 10, 39). Nearest relatives present at death or in attendance during illness (where a person *dies* in a house) not giving notice *within five days*. Such relatives or other specified persons failing to comply with registrar's requisitions. (40s.)
- 3 (ss. 11, 39). Relatives having knowledge of particulars (where a person dies not in a house, or where a dead body is found) not giving notice within five days. (40s.)

OFFENCES—
contd.

- 4 (s. 18). Burying child born alive as if stillborn. (10*l.*)
- 5 (ss. 20, 39). Medical practitioner who attended any deceased person neglecting to give certificate of the cause of death. Person to whom certificate is given failing to deliver it to registrar. (40*s.*)
- 6 (s. 35). Registrar refusing or without reasonable cause omitting to register birth or death. (50*l.*)
- 7 (s. 40). Wilfully giving false information to the registrar concerning birth or death, or making any false certificate or declaration required by the Act, or making any false statement with intent to have the same entered on the register of births or deaths. (10*l.*)

The fines are recoverable by *distress* and, in default, imprisonment, *without* hard labour, according to scale (p. 111). These fines are payable to the Exchequer.

Appeal lies if the sum adjudged to be paid exceeds 5*l.* (6 & 7 Will. 4, c. 86, s. 46).

The superintendent registrar may prosecute in all cases. In the case of the last-named offence (7), if the justices think that proceedings ought to be taken by *indictment*, they may proceed to treat the case as indictable, adjourning it, if necessary, to enable it to be so treated; and, on conviction, the offender would become liable to penal servitude (37 & 38 Vict. c. 88, s. 45). Proceedings by way of indictment must be commenced within three years (*ib.* s. 46).

To destroy, deface, forge or falsify a register is a statutory felony triable only at assizes (see 24 & 25 Vict. c. 98, ss. 36, 37).

Registration
of births and
deaths taking
place at sea.

As to the registration of births and deaths which take place *at sea*, see 57 & 58 Vict. c. 60. The master of every British ship, whether registered or not in the United Kingdom, must record in his log book the birth or death of any person happening on board his ship, and upon arrival at any port in the United Kingdom transmit a return to the Registrar-General of Shipping and Seamen (s. 254, sub-ss. (i.) (ii.)).

The Board of Trade may direct that, upon the arrival of the ship at any port out of the United Kingdom, the return be transmitted, if the port is in a British possession, to the superintendent or chief officer of Customs at such port, and, if elsewhere, to the British consular officer at the port; and the superintendent or officer must

transmit the same to the Registrar-General of Shipping and Seamen (s. 254, sub-s. (iii.)).

If the master of any ship fails to comply with the requirements of this section, he is liable to a penalty not exceeding 5*l*.

These provisions extend to registration of births and deaths on a ship which, although not a British ship, is one in which passengers are carried to or from any port of the United Kingdom as the port of destination or departure (s. 339).

BRAWLING.

See "CHURCH," *post*, p. 386.

BREAD.

The statute (6 & 7 Will. 4, c. 37) (*l*) applies to the sale of bread beyond the weekly bills of mortality, and ten miles from the Royal Exchange. Bread Act, 1836.

Every baker or seller of bread commits an OFFENCE if he *sells bread in any other manner than by weight*, unless the bread is French or fancy bread, or rolls (s. 4; cf. s. 4 of the "City of London Act"). For PENALTY, see p. 339. Selling otherwise than by weight.

It is to be noted that "selling by weight" in the statutes means selling by the *true weight* of the bread sold. "One may weigh a thing and sell it," said *Darling, J.*, "and yet not sell it by its weight. There would be a weighing, and then a selling otherwise than by weight" (*Cox v. Bleines*) (*m*). There must be a weighing *in reference to the sale*, though not necessarily at the actual time of sale, so that a weighing twelve hours before the purchase was held to be insufficient (*Mattinson v. Binley*) (*n*). In the case last cited it so happened that there had been an actual loss of 1½ oz., due to evaporation. Moreover, there must be a weighing of the loaf in reference to its sale *as a loaf of the weight demanded by the purchaser*, so that, where the purchaser

(*l*) See also the "City of London Act" (3 Geo. 4, c. cvi.).

(*m*) [1902] 1 K. B. 670; 71 L. J. K. B. 437; 86 L. T. 563; 50 W. R. 392; 66 J. P. 407. Cf. *Blackledge v. Bolshaw* (1908) 99 L. T. 60.

(*n*) [1908] 2 K. B. 534; 77 L. J. K. B. 832; 99 L. T. 53; 72 J. P. 346; 6 L. G. R. 760; 21 Cox, 636; 24 T. L. R. 671.

Selling other-
wise than by
weight—
contd.

asked for a 2 lb. loaf and received one which had been weighed as a $1\frac{3}{4}$ lb. loaf, a conviction was affirmed although the price paid was $3\frac{1}{2}$ d., the proper price for a loaf of the lesser weight (*Evans v. Jones*) (*nn*).

The bread must be actually weighed *after* baking and *before* sale, but not necessarily in the presence of the purchaser (*Hill v. Browning* (*o*); *R. v. Kennett* (*p*)). Merely placing a loaf in one pan of the scales without moving the beam is not "selling by weight," although there may be a weight in the other pan. But it is sufficient to ascertain that the weight is *above* the weight professed to be sold, without ascertaining the exact number of ounces or grains; it is not sufficient to ascertain that it is *below* (*Cox v. Bleines* (*q*); *Bridge v. Passman* (*r*)). The fact that the bread is of less weight than that asked for is *prima facie* evidence that it has not, in fact, been weighed (*Mitton v. Troke*) (*s*). A baker must not sell "the lump called a quartern loaf" *eo nomine*. Its presumed weight is four pounds, and, although he is not bound to weigh it *in the presence of his customer*, unless specifically required to do so, it is understood that what he is bound to deliver as a quartern loaf is four pounds weight of bread (*Jones v. Huxtable*) (*t*). Nor may household bread, in the form of a cottage loaf, be sold to a customer who asks for a "twopenny loaf," without regard to its weight (*London C. C. v. Read*) (*u*).

Each particular loaf must, moreover, be sold according to the weight of that particular loaf; and it will not suffice to show that a number of loaves were weighed together and that the *aggregate* weight was correct (*Welch v. Cutler* (*v*); see also an article in 72 J. P. at p. 314). As to whether bread which in 1836 was known as "French or fancy bread," but which is now matter of

(*nn*) (1908) 99 L. T. 799; 6 L. G. R. 1166; 25 T. L. R. 5; 72 J. P. 481.

(*o*) (1870) L. R. 5 Q. B. 453; 22 L. T. 584; 34 J. P. 774.

(*p*) (1869) L. R. 4 Q. B. 565; 20 L. T. 656; 33 J. P. 824.

(*q*) *Ante*, p. 337.

(*r*) (1903) 68 J. P. 129.

(*s*) (1869) 20 L. T. 563; 33 J. P. 821.

(*t*) (1867) L. R. 2 Q. B. 460; 36 L. J. Q. B. 325; 16 L. T. N. S. 381; 31 J. P. 534.

(*u*) [1900] 1 Q. B. 288; 69 L. J. Q. B. 39; 63 J. P. 775; 81 L. T. 452.

(*v*) (1905) 92 L. T. 239; 3 L. G. R. 282; 69 J. P. 149.

ordinary consumption, is within the exception, cf. *R. v. Wood* (x); *Aërated Bread Co. v. Gregg* (y). If bread be similar in size, shape and appearance to ordinary household bread, as usually sold, it is not “fancy” bread merely because it is made by a different process or of better materials than ordinary household bread (*F. F. Bread Co. v. Stubbs*) (z). It is not essential that it should differ in quality from ordinary bread; but it must present such an appearance that it is not likely to be confounded with ordinary household bread by a man ignorant of the intricacies of the baker’s trade (*Bailey v. Barsby*) (zz).

“Fancy bread.”

PENALTY.—FINE, not exceeding 40s., and, in default of distress, imprisonment, with or without hard labour, according to scale (p. 111).

Penalty.

It is, further, an offence for bakers or sellers of bread to use any other than the *avoirdupois weight* of sixteen ounces to the pound, and the several gradations of the same (s. 5).

Avoirdupois weight to be used.

PENALTY.—FINE, not exceeding 5*l.*, nor less than 40s., and, in default, as above. (As to mitigating the penalty in case of first offence, ante, p. 105.)

Penalty.

The following OFFENCES by bakers or sellers of bread also relate to the *selling* of bread (ss. 6, 7):

Other offences relating to the selling of bread.

(a) Neglecting to fix in some conspicuous part of the shop, on or near the counter, *a beam and scales with proper weights, or other sufficient balance*, in order that all bread there sold may be weighed in the presence of the purchaser (s. 6).

(b) Neglecting to *provide and keep for use* such proper beam and scales, and proper weights, or balance (s. 6).

(c) Having or using *any incorrect or false beam, or scales, or balance, or any false weight* (s. 6).

(d) Neglecting (where the bread is carried or sent out for delivery *in any cart or carriage* by the seller or

Selling bread from cart or carriage.

(x) (1869) L. R. 4 Q. B. 559; 38 L. J. M. C. 144; 20 L. T. N. S. 654; 33 J. P. 823.

(y) (1873) L. R. 8 Q. B. 355; 42 L. J. M. C. 117; 28 L. T. N. S. 816; 37 J. P. 388.

(z) (1896) 74 L. T. 704; 60 J. P. 424.

(zz) [1909] 2 K. B. 610; 78 L. J. K. B. 974; 7 L. G. R. 381; 100 L. T. 370; 25 T. L. R. 224; 73 J. P. 138.

his servant) to provide the cart or carriage with *a similar apparatus* to that referred to in (a) (s. 7).

(e) Having *weights deficient* according to the standard, when bread is so carried or sent out for delivery (s. 7).

Refusing to
weigh bread.

(f) When the bread is so carried or sent out for delivery, *refusing to weigh* the bread purchased in the presence of the person purchasing or receiving the same (s. 7). But it is necessary to constitute this offence that there should be a *request* by or on behalf of the purchaser (52 & 53 Vict. c. 21, s. 32).

And it is now provided that no penalty or forfeiture is to be incurred for weighing the bread by means of *any of the instruments included in the definition "weighing instrument"* in s. 35 of the Weights and Measures Act, 1899, *i.e.*, whether scales, scale beams, balances, spring-balances, steelyards, weighing machines or other instruments for weighing (4 Edw. 7, c. 28, s. 11).

A baker who delivers bread in a cart (*without scales, &c.*), to a customer at his house from time to time, in pursuance of a general order, is within s. 7 of the Act of 1836 (*Robinson v. Cliff*) (a). And this would be so even if the bread had been weighed in the shop before being placed in the cart; but not if the bread had been so weighed in the presence of the customer, and *the sale completed in the shop* (*Ridgway v. Ward* (b); *Daniel v. Whitfield* (c)).

Penalty.

PENALTY.—In respect of offence (c), FINE, not exceeding 5*l.*, for every such beam and scale, and balance, or false weight, recoverable by *distress*, and, in default, imprisonment, with or without hard labour, according to scale (p. 111), but not exceeding one month. In respect of offences (d), (e), and (f), FINE, not exceeding 5*l.*, recoverable similarly.

There seems to be no penalty imposed in respect of offences (a) and (b), so that they must be treated as *indictable misdemeanours* (cf. *R. v. Smith*) (d).

Adulteration
of bread.

A baker may make his bread of wheat, barley, rye,

(a) (1876) 1 Ex. D. 294; 45 L. J. M. C. 109; 34 L. T. 689; 40 J. P. 615.

(b) (1884) 14 Q. B. D. 100; 54 L. J. M. C. 20; 51 L. T. 704; 49 J. P. 150.

(c) (1885) 15 Q. B. D. 408; 54 L. J. M. C. 134; 53 L. T. 471; 49 J. P. 694.

(d) (1894) 63 L. J. M. C. 67; 70 L. T. 373; 58 J. P. 445.

oats, buckwheat, Indian corn, peas, beans, rice, or potatoes; and with salt, water, eggs, milk, barm, leaven, and potato or other yeasts, but *with no other ingredient whatsoever* (6 & 7 Will. 4, c. 37, s. 2). If this requirement be not complied with, and a prohibited ingredient be used in the making of bread for sale, an offence is committed by the baker or other person who made the bread (s. 8). It would seem that *guilty knowledge* must be shown, but a master may be liable when there is guilty knowledge on the part of his servant (*Core v. James*) (e).

PENALTY.—FINE, not exceeding 10*l.*, and, in default of *payment*, imprisonment, with or without hard labour, according to scale (p. 111). Penalty.

The name and addresses of the offender may be advertised in a newspaper, and the expenses defrayed out of the penalty.

It is further made an offence to adulterate corn, meal, or flour, dressed or to be dressed for sale; and this extends to selling the flour of one sort of grain for the flour of another (s. 9). Adulteration of flour.

PENALTY.—FINE, not exceeding 20*l.*, recoverable by *distress*, and, in default, imprisonment, with or without hard labour, according to scale (p. 111), but not exceeding one month.

If bread be made wholly or partially of peas, beans, or potatoes, or of any other grain than wheat, it must be stamped with the letter M, otherwise the person making or selling it, or exposing it for sale, commits an offence (s. 10). Flour mixed with potato yeast is excepted. Marking certain kinds of bread.

PENALTY.—FINE, not exceeding 10*s.* for every pound weight of such bread, recoverable similarly by *distress*.

And if there be found on the premises of a miller, mealman, or baker, any ingredient or mixture which a justice adjudges to have been deposited there for the purpose of adulterating meal, flour, or bread, the miller, &c., commits an offence (s. 12). Being in possession of ingredients for adulteration.

PENALTY.—First offence, FINE, not exceeding 10*l.*, and in default of *payment*, imprisonment, with or without hard labour, according to scale (p. 111); with further penalties in case of a second or subsequent offence.

(e) (1871) L. R. 7 Q. B. 135; 41 L. J. M. C. 19; 25 L. T. 593; 35 J. P. 740.

As to obstructing or hindering the execution of search warrants, see s. 13.

And as to penalties for baking, &c., on the Lord's Day, see s. 14.

As to the remedy of a master baker over against his servant, through whose acts or neglect the offence was occasioned, see s. 13.

Search
warrant.

A search warrant may be issued by a justice, apparently without information *on oath*, empowering any constable to enter, at seasonable times, any place wherein any miller, baker, &c., grinds grain or bakes bread for sale (ss. 11, 13, 16).

Information,
&c.

The information must be laid before a justice who is not a miller, baker, or mealman, and it must be laid *within forty-eight hours after the commission of the offence, or within such reasonable time as to the justice may seem fit* (s. 31). One half the penalty is, too, payable to the informer (s. 32). APPEAL lies against a conviction to the quarter sessions, and, in the meantime, execution of the judgment is to be suspended (s. 25).

One justice may hear the case, but his power of punishment will be limited (*ante*, p. 12).

Prosecutions might, of course, be instituted in many cases, also, under the Sale of Food and Drugs Acts, or under the Acts relating to weights and measures.

BRIBERY.

Official
corruption.

The "Public Bodies Corrupt Practices Act, 1889" (52 & 53 Vict. c. 69), renders the corruption of (or any corrupt practices by) the officials of public bodies in the United Kingdom, connected with local government, the administration of the poor law, or the public health, or otherwise empowered to administer money raised by rates in pursuance of a public general Act, a *misdemeanour* to be prosecuted on indictment by, or with the consent of, the Attorney-General. The Act covers all cases of giving, offering, soliciting, or receiving a bribe, reward, or any advantage whatsoever, "as an inducement to, or reward for, or otherwise on account of" any member, officer, or servant of a public body, doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which the public

body is concerned (s. 1 (i.) (ii.)). The word "advantage" includes any office or dignity, and any forbearance to demand money or money's worth or valuable thing (*R. v. Edwards*) (f). Official corruption.

The "Prevention of Corruption Act, 1906" (6 Edw. 7, c. 34), deals with corrupt transactions with *agents*, a term which includes any persons "employed by or acting for another." A person serving under the Crown, or under any corporation, municipal borough, county, or district council, or board of guardians, is an "agent" within the meaning of the Act. The *information* must be on oath, and no prosecution can be instituted without the consent of the Attorney-General or Solicitor-General. PREVENTION OF CORRUPTION ACT, 1906.

The Act makes it an OFFENCE if,

- (a) Any *agent* CORRUPTLY accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gift or consideration as an inducement or reward for doing or forbearing to do, or for having after the passing of the Act done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business; or
- (β) Any person CORRUPTLY gives or agrees to give or offers any gift or consideration to any agent as an inducement or reward for doing or forbearing to do, or for having after the passing of the Act done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business; or
- (γ) Any person KNOWINGLY gives to any agent, or if any agent knowingly uses with intent to deceive his principal, any receipt, account, or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal.

If the case is to be tried summarily, the accused must,

before the charge is proceeded with, be afforded the OPTION OF TRIAL BY JURY (*ante*, p. 63).

Penalty.

PENALTY.—FINE not exceeding 50*l.*, or in default of *distress* imprisonment according to scale (p. 111); or IMPRISONMENT, with or without hard labour, for a term not exceeding FOUR MONTHS; or to *both* imprisonment and fine.

If the court regards the case as of too serious a character to be dealt with *summarily*, the charge may be treated as *indictable*; and the accused will be liable on indictment to imprisonment for two years, or to a fine of 100*l.*, or both. The committal must be to the assizes (s. 2 (v.)). The Vexatious Indictments Act applies, *ante*, p. 133.

If the accused is tried summarily, APPEAL lies to the quarter sessions (s. 2 (vi.)).

As to BRIBERY at Parliamentary Elections, see 46 & 47 Vict. c. 51, ss. 3, 6 (i.); and at Municipal Elections, see 47 & 48 Vict. c. 70, s. 2 (ii.).

See, too, *ante*, p. 238, as to the BRIBERY of officials under the Sale of Food and Drugs Acts.

OFFICIAL
SECRETS
ACT, 1889.

As to the DISCLOSURE OF OFFICIAL SECRETS, see "Official Secrets Act, 1889," 52 & 53 Vict. c. 52. With the consent of the Attorney-General, persons may be prosecuted *on indictment* for (a) the wrongful obtaining of information as to a fortress, arsenal, dockyard, or other like place belonging to the Crown, or (3) the corrupt breach of an official trust on the part of one who holds, or has held, office under the Crown (ss. 1, 2, 7).

BROTHELS.

Procedure by
indictment.

Under the provisions of 25 Geo. 2, c. 36, ss. 5, 6, 7, as amended by 58 Geo. 3, c. 70, any two inhabitants of a place "paying scot or bearing lot" might obtain a warrant against the keeper of a brothel, gaming-house, or other disorderly house, and cause him to be bound over before a justice, without more ado, to answer an indictment at the sessions. The two inhabitants were required to give notice of the existence of the brothel to a constable of the parish and the overseers, and, on such inhabitants swearing that they believed the contents of the notice to be true, and entering into a recognizance of 20*l.* each to give material evidence, it was compulsory

on the constable or the overseers thereupon to enter into a recognizance to prosecute, and on the justice to issue his *warrant* for the arrest of the accused. The accused was then bound over to answer to the charge at the sessions or assizes, and, if need be, to give security for his good behaviour in the meantime. The course of procedure is now modified by the operation of the Vexatious Indictments Act, and the justice, before binding the accused over to appear at the sessions or assizes, must require evidence in support of the charge, and hear the defendant's answer, as in the case of any other indictable offence (*ante*, p. 124). In the event of conviction after trial on indictment, the offence is punishable as a *misdemeanour*, i.e., by fine or imprisonment (with or without hard labour), or both, at the discretion of the court, and each of the two inhabitants is entitled to a reward of 10*l.* from the overseers. At the hearing before a jury on the trial of such an indictment, the husband or wife of the defendant would *not* be a competent witness for the *prosecution* (cf. *ante*, p. 171).

Procedure by indictment.

Under the Criminal Law Amendment Act, 1885, every person commits an offence punishable on summary conviction who

Summary proceedings under the Criminal Law Amendment Act.

- (i.) keeps, or manages, or acts or assists in the management of, a brothel; or
- (ii.) being the tenant, lessee, or occupier of any premises, *knowingly permits* such premises, or any part thereof, to be used as a brothel, or for the purposes of habitual prostitution; or
- (iii.) being the lessor or landlord of any premises, or the agent of such lessor or landlord, *lets* the same or any part thereof, with the knowledge that such premises, or some part thereof, are or is to be used as a brothel, or is wilfully a party to the continued use of such premises, or any part thereof, as a brothel (48 & 49 Vict. c. 69, s. 13).

In the case of proceedings for a *second or subsequent* offence, the accused must be afforded the OPTION OF TRIAL BY JURY: as to the procedure to be adopted, see *ante*, p. 65. The husband or wife of the defendant may be called as a witness either for the *prosecution* or defence and without the consent of the defendant (*ante*, p. 174).

PENALTY.—*First Offence*.—FINE, not exceeding 20*l.*, Penalty.

and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111, and *R. v. JJ. of Tynemouth*, there cited);

Or, IMPRISONMENT for not more than THREE MONTHS, with or without hard labour.

Second Offence.—FINE, not exceeding 40*l.*, with like consequences in default;

Or, IMPRISONMENT for not more than FOUR MONTHS, with or without hard labour.

On a *third* or subsequent conviction the defendant may also be required to enter into recognizances, with or without sureties, to be of good behaviour for not more than twelve months, and, in default, may be imprisoned for an additional term of *three months*.

Appeal.

APPEAL lies against a conviction to quarter sessions.

If, on a charge of keeping a brothel, the court regards the case as of too serious a nature to be dealt with summarily, the accused may be committed for trial on indictment before a jury.

Nature of the offence.

As to the meaning of "brothel," see *R. v. Stannard* (*g*) and *R. v. Barratt* (*h*). It is not essential to constitute the offence of keeping a brothel that any indecency or disorder should be visible from the outside (*R. v. Rice*) (*i*); but the house, or room, or suite of rooms, must be used as a bawdy-house, and not merely as the residence of a prostitute (*Singleton v. Ellison*) (*k*). Observe, however, the words in sub-s. (ii.): "for the purposes of habitual prostitution." A set of rooms let to a female lodger, and used by her habitually as a place to which men may resort with her for immoral purposes, would seem to be clearly covered by these words, although there may be no promiscuous prostitution (48 & 49 Vict. c. 69, s. 13 (ii.)).

And, in a very recent case, a man was convicted of being "wilfully a party to the continued use of premises as a brothel" (*ib.* s. 13 (iii.)) in the following circumstances:—The defendant was the porter at the premises, which were divided internally into eighteen flats, and among the tenants of the flats were twelve women who,

(*g*) (1863) 33 L. J. M. C. 61; L. & C. 349; 12 W. R. 208.

(*h*) (1862) 32 L. J. M. C. 36; L. & C. 263; 7 L. T. N. S. 435.

(*i*) (1866) L. R. 1 C. C. R. 21; 35 L. J. M. C. 93.

(*k*) [1895] 1 Q. B. 607; 64 L. J. M. C. 123; 59 J. P. 119; 43 W. R. 427.

to the defendant's knowledge, were in the habit of bringing men to them for the purpose of prostitution. There was no evidence as to the other tenants, nor to show which flat was occupied by which woman, nor was it proved that any one flat was occupied by more than one woman. Yet it was held that there was evidence to support a finding that the premises *as a whole* were being used "as a brothel" (*Durose v. Wilson*) (*l*).

As to the meaning of "wilfully" in sub-s. (iii.), cf. *Gully v. Smith* (*m*), in which case it was held that the word "wilful" does not necessarily imply the doing of an act. It may be sufficient that there should be a mere abstaining from the doing of an act; and cf. *post*, p. 372 (*n*).

The above-mentioned enactments for encouraging prosecutions of disorderly houses (25 Geo. 2, c. 36; 58 Geo. 3, c. 70) are, "with the necessary modifications," to be deemed to apply to prosecutions by summary proceedings under the Criminal Law Amendment Act, 1885 (s. 13); so that a prosecutor may either proceed simply in accordance with the Summary Jurisdiction Acts, or he may comply with the provisions of the earlier enactments, and so become entitled to the reward (*Kirwin v. Hines*) (*n*). Thus, although the proceedings may be taken under the Act of 1885, yet if an application for a warrant is made in accordance with 25 Geo. 2, c. 36, a magistrate is bound to grant the warrant, and cannot insist upon the laying of an information under the Summary Jurisdiction Acts (*R. v. Newton*) (*o*).

Reference should also be made to the provision in the Criminal Law Amendment Act, 1885, directed against the detention of a female in a brothel. It provides that a misdemeanour (punishable on indictment only with two years' imprisonment, and not triable at quarter sessions) is committed by any person who detains any woman or girl against her will—

- (i.) In or upon *any premises* with intent that she may be *unlawfully and carnally known* by any man, whether any particular man or generally; or

(*l*) (1907) 96 L. T. 645; 71 J. P. 263.

(*m*) (1883) 12 Q. B. D. 121; 53 L. J. M. C. 35; 48 J. P. 309.

(*n*) (1886) 54 L. T. 610; 50 J. P. 230.

(*o*) [1892] 1 Q. B. 648; 61 L. J. M. C. 121; 66 L. T. 830; 40 W. R. 688; 56 J. P. 408 (and see *ante*, p. 344).

Application of procedure under earlier statutes to proceedings under the Criminal Law Amendment Act.

Detention of a woman or girl in a brothel, &c.

(ii.) In any *brothel*.

Proof of
detention.

“Where a woman or girl is in or upon any premises for the purpose of having any unlawful carnal connection, or is in any brothel, a person shall be deemed to detain such woman or girl in or upon such premises or in such brothel, if, with intent to compel or induce her to remain . . . such person withholds . . . any wearing apparel, &c., belonging to her, *or*, where wearing apparel has been lent or otherwise supplied to such woman or girl by or by the direction of such person, such person threatens such woman or girl with legal proceedings if she takes away with her the wearing apparel so lent or supplied.”

“No legal proceedings, whether civil or criminal, shall be taken against any such woman or girl for taking away or being found in possession of any such wearing apparel as was necessary to enable her to leave such premises or brothel” (48 & 49 Vict. c. 69, s. 8).

Search
warrant.

Under s. 10 of the last-cited Act, a search warrant may be issued, on sworn information, where there is reasonable cause to suspect that any woman or girl is unlawfully detained for immoral purposes in any place within the jurisdiction of the justice before whom the information is laid.

If the girl be under *sixteen* years of age, the *procedure* is under the Children Act, 1908, *post*, pp. 379—383.

Harbouring
thieves in a
brothel.

Prevention of
Crimes Act,
1871.

Everyone commits an offence punishable on summary conviction who occupies or keeps a *brothel*, and (a) knowingly lodges or knowingly *harbours thieves or reputed thieves*; *or*, (b) knowingly permits or knowingly suffers them to meet or assemble therein; *or*, (c) knowingly allows the deposit of goods therein, having reasonable cause for believing them to be stolen (34 & 35 Vict. c. 112, s. 11).

PENALTY.—FINE, not exceeding 10*l.*, and, in default of *payment*, imprisonment, with or without hard labour, according to scale (p. 111).

The court may also require recognizances, with or without sureties, for amounts not exceeding 20*l.* each for twelve months, and, in default, imprisonment for not more than *three months* (s. 10).

As to a *licensed person* permitting his premises to be used as a “*Brothel*,” see *post*, p. 631.

BURGLARY.

See "HOUSEBREAKING," *post*, p. 545.

BURIALS.

It is an *indictable misdemeanour* to disinter a dead body without authority.

The mere burning of a dead body, instead of burying it, is not necessarily a crime. It amounts, however, to an *indictable misdemeanour* if the burning is so conducted as to create a public nuisance, or is carried out with the view of preventing the holding of an inquest (*R. v. Stephenson*) (oo). Burning dead bodies.

The burning of dead bodies in a "crematorium" is regulated by the Cremation Act, 1902, which makes it an OFFENCE, punishable summarily with a PENALTY of 50*l.*, in addition to any other penalty, to contravene any regulation made under the Act by the Secretary of State, or to take part in the burning of human remains in the crematorium except in accordance with the Act and the regulations. Penalties are recoverable by distress and, in default, imprisonment, according to scale (p. 111); and Appeal lies (2 Edw. 7, c. 8, s. 8 (i.)). Cremation.

An *indictable misdemeanour* is committed by any person who (a) wilfully makes any false declaration or representation, or signs or utters any false certificate, with a view to procuring the burning of any human remains, or (β), with intent to conceal the commission or impede the prosecution of any offence, procures or attempts to procure the cremation of a body, or makes a declaration, &c. under the Act (*ib.* s. 8 (ii.), (iii.), and see *post*, p. 386).

BYE-LAWS.

Justices are frequently called upon to decide questions arising as to the validity and enforcement of bye-laws, see, *e.g.*, "HACKNEY CARRIAGES," *post*, p. 520; "PUBLIC HEALTH," *post*, pp. 804, 855; "RAILWAYS," p. 865; "WEIGHTS AND MEASURES," *post*, p. 947. It is, therefore, desirable to state the nature of the considerations applicable to the decision of such questions.

The court must in the first place be satisfied that the Power to make.

(oo) (1884) 13 Q. B. D. 331; 53 L. J. M. C. 176.

body or authority, assuming to make bye-laws, has power by statute, charter or otherwise, so to do; further, that the bye-laws have been duly *published*, the method of publication being generally prescribed by the statute or charter authorizing the making of the bye-laws. More-
 Publication. over, if any *confirmation* is rendered necessary by the terms of the statute or charter, as, *e.g.*, by the Local Government Board, a Secretary of State, &c., it must appear that such confirmation has taken place in due form. Notwithstanding proof of the due making, con-
 Confirmation. firmation, and publication of the bye-laws under con-
 Conditions of sideration, the justices must, if objection be taken, validity. proceed to inquire as to the *validity* of the particular bye-law sought to be enforced, and, with that object, must ascertain—

(a) That the bye-law is not *ultra vires*; *i.e.*, it must clearly appear that the subject-matter and the penalty are such as to fall within the powers conferred upon its authors, and that it extends only within such limits and to such persons as it may, by law, be made applicable to (*cf.*, *e.g.*, *Kennaird v. Cory*) (p).

(β) That the bye-law is *not inconsistent with or repugnant to the general law* of the country. The bye-law must not, in respect of any matter which has already been dealt with by the general law, go beyond the provision already made (*Calder and Hebble Navigation Co. v. Pilling*) (q). But it must not be supposed that a bye-law infringes this canon merely because it forbids the doing of something which might lawfully have been done before, or requires something to be done which there was no previous obligation to do; otherwise a nominal power of making bye-laws would be utterly nugatory (per *Campbell, C.J.*, in *Edmonds v. The Watermen's Co.*) (r); and thus, a bye-law forbidding any person to frequent and use a street for the purpose of betting is not repugnant to a Metropolitan Street Act which prohibits the assemblage of three or more persons in a street for a like purpose (*White*

(p) [1898] 2 Q. B. 578; 62 J. P. 580.

(q) (1845) 14 M. & W. 87.

(r) (1855) 1 Jur. N. S. at p. 729 (and see 60 J. P. p. 355).

v. *Morley*) (s). Nor is a bye-law providing that no one shall "sweep or otherwise remove from any shop, house, or vehicle into any street, any waste paper, shavings, or other refuse," invalid, though under a local Police Act a penalty is imposed on any person "who in any thoroughfare shall throw or lay any dirt, litter . . . offal, or rubbish" (*Batchelor v. Sturley*) (t). Moreover, a bye-law repugnant to the common law, as, e.g., by being so framed as to render a master criminally liable for the unauthorized act of his servant, may nevertheless be valid if the power to make such a bye-law was sufficiently wide and explicit. Thus, where there was a statutory power to regulate the conduct of slaughter-houses, and a bye-law imposed conditions as to the place and mode of slaughter, a master was held liable for the act of his servant committed within the general scope of the latter's employment, although contrary to the orders of the master (*Collman v. Mills*) (u). It should, too, be noted that bye-laws may be made imposing obligations upon, e.g., builders or plumbers who execute works of construction or alteration on behalf of others. "But if," said *Alverstone*, C.J., "it is intended to impose such an obligation upon mere agents who are executing the work for others, the bye-laws should be framed in such a manner as to make it reasonably clear that that was the intention" (*Kershaw v. Brooks*) (uu).

Conditions of validity—*contd.*

(γ) That the terms of the bye-law are free from ambiguity, and are such as to render the nature of the obligation imposed and the penalty incurred by the disregard of such obligation, clear, positive, and definite. Thus, e.g., a bye-law of a municipal corporation providing that, "No person shall wilfully annoy passengers in the streets" is void for uncertainty (*Nash v. Finlay*) (v).

(δ) That the bye-law is reasonable. Thus, e.g., a bye-

(s) Cited *post*, p. 356.

(t) (1905) 93 L. T. 539; 69 J. P. 398; 3 L. G. R. 1056.

(u) [1897] 1 Q. B. 396; 66 L. J. Q. B. 170; 75 L. T. 590; 61 J. P. 102.

(uu) [1909] 2 K. B. 265; 78 L. J. K. B. 736; 73 J. P. 231; 100 L. T. 853; 7 L. G. R. 578.

(v) (1901) 85 L. T. 682; 66 J. P. 183.

Conditions of
validity—
contd.

law which forbade any person, except soldiers, "to sound or play upon any musical instrument in any of the streets of the borough on Sunday" was held to be arbitrary and inflexible and, therefore, unreasonable (*Johnson v. Mayor of Croydon*) (*w*); see also *London and Brighton Ry. v. Watson* (*x*); *Alty v. Farrell* (*y*); *Kruse v. Johnson* and *Walker v. Stretton* (*z*). Again, a bye-law, regulating the sale or hawking of articles on the foreshore, was held to be unreasonable, inasmuch as it altogether prohibited such sale, &c., "except in pursuance of an agreement with" the corporation and in such part of the foreshore as the corporation might choose to appoint (*Parker v. Bournemouth Corporation*) (*a*). It had been held in an earlier case (*Gray v. Sylvester*) (*b*) that a bye-law prohibiting a sale "except by direction of" the local authority, was valid. So far as the cases are distinguishable, it would seem that, in the later case, the corporation might insist upon terms of agreement however arbitrary and unreasonable. And, in *Arlidge v. Islington Borough Council* (*bb*), a bye-law was held to be unreasonable, inasmuch as it imposed an absolute obligation upon the landlord to cause work to be done in a lodging-house although he might have no right of entry therein. See also *Williams v. Weston-super-Mare* (*c*); and *Moorman v. Tordoff* (*d*). The circumstance that under local Acts there is a right of appeal to quarter sessions, in connection with the subject-matter of the bye-law, is one which may be taken into account in considering the question of reasonableness (*Cook v. Hainsworth*) (*e*).

Bye-law may
be good in

It must be added that a bye-law may be good in

(*w*) (1886) 16 Q. B. D. 708; 55 L. J. M. C. 255; 54 L. T. 295.

(*x*) *Post*, p. 865.

(*y*) *Post*, p. 948.

(*z*) *Post*, p. 355.

(*a*) (1902) 86 L. T. 449; 66 J. P. 440.

(*b*) (1897) 61 J. P. 807.

(*bb*) [1909] 2 K. B. 127; 78 L. J. K. B. 553; 25 T. L. R. 470;
73 J. P. 301; 7 L. G. R. 649; 100 L. T. 903.

(*c*) (1908) 98 L. T. 531; 6 L. G. R. 92; 72 J. P. 54.

(*d*) (1908) 98 L. T. 416; 6 L. G. R. 360; 72 J. P. 142.

(*e*) [1896] 2 Q. B. 85; 75 L. T. 51; 60 J. P. 439; 44 W. R. 541.

part and bad in part if from its terms it appears clearly to be severable; so that, although one clause in the bye-law may be invalid as, *e.g.*, on the ground that it is unreasonable, yet a defendant may be convicted for an infringement of another clause if the two clauses be manifestly severable (*Kent C. C. v. Humphrey*) (*f*).

part and bad in part.

A local authority empowered to make bye-laws has no power to sanction a contravention of or waive compliance with such bye-laws when duly made by them (*Yabbicom v. King*) (*g*).

No power to sanction contravention.

By the Municipal Corporations Act, 1882, a town council may make bye-laws “(a) for the good rule and government of the borough, and (b) for prevention and suppression of nuisances not already punishable in a summary manner by virtue of any Act in force throughout the borough” (45 & 46 Vict. c. 50, s. 23). By the Local Government Act, 1888, a county council have the same power of making bye-laws in relation to their county, or to any specified part or parts thereof (excluding the areas of boroughs), as the town council have in relation to their borough (51 & 52 Vict. c. 41, s. 16). APPEAL lies (*ib.* s. 75; 45 & 46 Vict. c. 50, s. 219).

Powers of borough and county councils.

Before such bye-laws can take effect they must be sent to the Home Secretary, and they will not become operative if within forty days they are *disallowed* by Order in Council. Those bye-laws, however, which are for the prevention and suppression of nuisances, are to be subject to *confirmation* by the Local Government Board instead of being sent to the Secretary of State.

Such bye-laws are *PROVED* by the production of a written or printed copy *authenticated by the corporate seal*, and (until the contrary is shown) this is sufficient evidence of their being duly made and still in existence. Moreover, if it be stated in the copy that there has been approval and confirmation, this will, in the absence of evidence to the contrary, suffice as proof (45 & 46 Vict. c. 50, s. 24). The production of a copy so authenticated is, indeed, *prima facie* evidence of the publication and of compliance with all the statutory requirements (*Robinson v. Gregory*) (*h*).

Bye-laws of borough and county councils

(*f*) *Post*, p. 948.

(*g*) [1899] 1 Q. B. 444; 68 L. J. Q. B. 560; 80 L. T. 159.

(*h*) [1905] 1 K. B. 534; 74 L. J. K. B. 367; 92 L. T. 171; 69 J. P. 161; 3 L. G. R. 308.

Bye-laws of
borough and
county
councils—
contd.

It will be useful to refer to certain decisions upon bye-laws framed under the two Acts last cited. In *Strickland v. Hayes* (*i*), a bye-law providing that "no person shall in any street or public place, or on land adjacent thereto, sing or recite any profane or obscene song or ballad, or use any profane or obscene language," was held invalid, even as regards acts done in a street or public place, apparently on the ground that, inasmuch as it was not limited by the words "to the annoyance of the public," or words to the like effect, it went beyond the provisions of the general law as contained in the Town Police Clauses Act (*post*, p. 567). But see *Gentel v. Rapps*, *infra*.

There is, however, jurisdiction to make a bye-law prohibiting the use of indecent or obscene language under such circumstances as to be *an annoyance* to persons lawfully passing along a highway: consequently, a bye-law in the following terms was held valid:—"No person shall in any house, building, garden, land, or other place *abutting on, or near to, a street or public place* make use of any violent, abusive, profane, indecent, or obscene language, gesture, or conduct *to the annoyance of any person* in such street or public place" (*Mantle v. Jordan*) (*k*). And, similarly, a bye-law was held valid which prohibited the use of shooting galleries, roundabouts, &c., in any street or public place, or land thereto adjoining, *to the annoyance or disturbance of residents or passengers* (*Teale v. Harris*) (*l*). And in *The Mayor of Southend v. Davis* (*m*), the bald prohibition of organs or other musical instruments worked by steam or mechanical means, throughout the whole borough, was approved; while, in a case where the bye-law was made under the Tramways Act, 1870 (for "preventing the commission of any nuisance in or upon any carriage"), and prohibited the use of "obscene or offensive language," it was held valid, although there was nothing to import that the

(*i*) [1896] 1 Q. B. 290; 65 L. J. M. C. 55; 60 J. P. 164; 74 L. T. 137; 44 W. R. 398.

(*k*) [1897] 1 Q. B. 248; 66 L. J. Q. B. 224; 75 L. T. 552; 61 J. P. 119.

(*l*) (1896) 60 J. P. 744.

(*m*) (1900) 16 T. L. R. 167.

language need be an annoyance to passengers or a nuisance (*Gentel v. Rapps*) (*n*).

And, indeed, so far as the necessity for *reasonableness* is concerned, bye-laws made by *public representative bodies*, such as county councils, are now treated by the courts with peculiar indulgence, being held valid although clearly capable of being unreasonably enforced. Thus, the following bye-law of a county council was upheld: "No person shall sound or play upon any musical or noisy instrument or sing in any public place or highway within fifty yards of any dwelling-house *after being required by any constable*, or by an inmate of such house personally, or by his or her servant to desist" (*Kruse v. Johnson*) (*o*). See also *Walker v. Stretton* (*p*), where the court held a somewhat involved bye-law which required vehicles to carry lights during certain hours of the night to be valid, *Russell, C.J.*, pointing out that the court ought, so far as possible, to support bye-laws made by a local authority unless they are of opinion that such bye-laws are clearly *ultra vires* or unreasonable. "The court ought not to be astute to pick holes in bye-laws made by persons who know the circumstances of the case they have to meet better than the court is able to do."

A bye-law prohibiting the user of a street or public place for the purpose of selling, &c., any paper devoted wholly or mainly to giving information as to the probable result of races, &c., was held to be unreasonable and invalid (*Scott v. Pilliner*) (*q*). Betting in streets and public places is now usually regulated by the Act of 1906 (*ante*, p. 325); but as illustrations of the principles which guide the framing of bye-laws, we may refer to the following cases:—In *Burnett v. Berry* (*r*) a bye-law for the suppression of street betting was held valid. It ran as follows: "Any person who shall *frequent and use*

Selling racing papers, betting, &c.

(*n*) [1902] 1 K. B. 160; 71 L. J. K. B. 105; 85 L. T. 683; 66 J. P. 117; 18 T. L. R. 72.

(*o*) [1898] 2 Q. B. 91; 67 L. J. Q. B. 782; 46 W. R. 630; 62 J. P. 469.

(*p*) (1896) 44 W. R. 525; 60 J. P. 313.

(*q*) [1904] 2 K. B. 855; 73 L. J. K. B. 998; 91 L. T. 658; 53 W. R. 284; 68 J. P. 518; 20 T. L. R. 662.

(*r*) [1896] 1 Q. B. 641; 65 L. J. M. C. 118; 60 J. P. 375; 74 L. T. 494.

Bye-laws as
to betting
—*contd.*

any street or other public place within the borough of W., either on behalf of himself or of any other person, for the purpose of bookmaking or betting or wagering, or agreeing to bet or wager with any person, shall be liable," &c. The court, however, were of opinion that it would be impossible under such a bye-law to convict a person who happened to be in the streets and casually made a bet there: it was confined by its terms to persons who made a business of betting and sought to carry on that business in the street. See also *Jones v. Walters* (s); *White v. Morley* (t); *Thomas v. Sutters* (u); and *Airton v. Scott*, *ante*, p. 325.

In *Godwin v. Walker* (v), a bye-law with a similar object but differently phrased was held to be reasonable and valid. It ran as follows: "A person shall not, together with any other person or persons, assemble in any street or public place for the purpose of betting."

Where a bye-law *authorized by a local Act* (and, therefore, clearly *intra vires*) prohibited betting in "any place of public resort," it was held to cover a piece of ground to which the public habitually resorted, though without the permission of the owner of the land (*Kitson v. Ashe*) (w). And cf. *Airton v. Scott*, cited *ante*, p. 325 where the bye-law referred to any "open space to which the public had access for the time being": this was held to cover an athletic ground to which the public had access *on payment of an entrance fee*. "It seems to me," said *Alverstone*, C.J., "that, if the public in fact have access, the fact that they have to pay makes no difference."

Bye-laws
under the
Tramways
Act, 1870.

Bye-laws are frequently made under the Tramways Act, 1870 (33 & 34 Vict. c. 78, s. 46); see, *e.g.*, *Gentel v. Rapps* (x).

In *Lowe v. Volp* (y), it was held that a bye-law providing, under penalties, that each passenger should

(s) (1898) 78 L. T. 167; 62 J. P. 374.

(t) [1899] 2 Q. B. 34; 68 L. J. Q. B. 702; 63 J. P. 550.

(u) [1900] 1 Ch. 10; 69 L. J. Ch. 27; 48 W. R. 133.

(v) (1896) 60 J. P. 309.

(w) [1899] 1 Q. B. 425; 68 L. J. Q. B. 286; 80 L. T. 323; 63 J. P. 325.

(x) *Ante*, p. 355.

(y) [1896] 1 Q. B. 256; 65 L. J. M. C. 43; 74 L. T. 143; 60 J. P. 232; 44 W. R. 442.

“show his ticket (*if any*) when required so to do, to the conductor or any duly authorized servant of the company,” was valid and reasonable as affording the company a check over their servants. And in *Hanks v. Bridgman* (z), a magistrate was directed to convict a passenger who, having inadvertently torn up and thrown away his ticket, without any intention to defraud the company, refused to pay the fare over again. The bye-law ran: “shall when required so to do either deliver up his ticket or pay the fare legally demandable for the distance travelled over by such passenger.” As this bye-law was held to be good, it would seem that a man who accidentally loses his ticket and has no money in his pocket might be convicted of an offence; and (as *Jelf, J.*, pointed out in *Arlidge v. Islington Borough Council*, cited *ante*, p. 352) “the court may always test the reasonableness of a bye-law by its application in an extreme case.” It is true that, in the case actually decided, the respondent *wilfully refused* to pay the fare over again, and this seems to have been relied on by the court; but the bye-law, of which the *validity* was in question, did not in terms contain any reference to a wilful refusal, or, indeed, to any refusal at all. See also *Hunt v. Green* (a) and *Tuffley v. Tate* (b), upholding the validity of bye-laws under which fares were demanded where there had been no intention to defraud on the part of passengers.

Provision has been made by statute for the receipt in evidence of *copies* of statutory rules, regulations, and bye-laws issued by a Secretary of State, the Board of Trade, the Board of Agriculture, &c., if printed by the King's printer or under the authority of the Stationery Office (see the Documentary Evidence Acts, 1868 to 1895, and the Rules Publication Act, 1893 (56 & 57 Vict. c. 66, ss. 3, 4)). The production of a copy of the *Gazette* purporting to contain the proclamation, order, or regulation will also suffice.

Statutory
rules and
bye-laws.

As to bye-laws and regulations for the prevention of

Bye-laws as to
commons.

(z) [1896] 1 Q. B. 253; 65 L. J. M. C. 40; 74 L. T. 26; 60 J. P. 312.

(a) (1907) 96 L. T. 24; 71 J. P. 18; 5 L. G. R. 67; 23 T. L. R. 19; 21 Cox, 333.

(b) (1907) 96 L. T. 24; 71 J. P. 21; 5 L. G. R. 448; 21 Cox, 337.

nuisances and the preservation of order on *commons*, see the Commons Act, 1899 (62 & 63 Vict. c. 30, ss. 1, 10). Such bye-laws may be made by the council of an urban or rural district as under the Public Health Acts (*ib.*).

CANAL BOATS.

Canal Boats
Acts, 1877 and
1884.

Under the "Canal Boats Act, 1877" (40 & 41 Vict. c. 60), the Local Government Board are required to make regulations—

- (i.) For the registration of canal boats.
- (ii.) For the marking and numbering of such boats.
- (iii.) As to the number, age, and sex of their inhabitants.
- (iv.) For enforcing cleanliness, &c., on board.
- (v.) For preventing the spread of infectious disease through boats.

No unregistered boat may be used as a dwelling after six months from the coming into force of such regulations.

Regulations under this statute were made by an Order dated March 20th, 1878, which came into force on June 30th following. The period from which the registration of inhabited boats became compulsory dates accordingly from January 1st, 1879. A similar Order (May 17th, 1878) declares which of the sanitary authorities of England and Wales are to be registration authorities for the purposes of the Act.

Powers are given to every sanitary authority within whose district a canal, or any part of a canal, is situate, to exercise all powers in relation to provision against infection conferred by the Public Health Act, and to detain for the necessary period any infected boat.

Powers of entry are conferred in case of suspected contravention of the Act, or of the supposed existence of infectious disease on board, upon the authorization of a registration or sanitary authority, or of any justice.

As to the position of children in canal boats under the Elementary Education Acts, see s. 6, and *post*, p. 432.

Offences.

If a canal boat is used as a *dwelling* when it has not been registered, *or* is used as a dwelling for persons exceeding in number or not of the age and sex prescribed, the *master* (*i.e.*, the person having for the time being

command of the boat) and the *owner* (*i.e.*, the actual owner, or the hirer if he appoints the master), if in fault, each commit an offence (40 & 41 Vict. c. 60, s. 1). Canal Boats Acts—*contd.*

PENALTY.—FINE, not exceeding 1*l.* for each occasion on which the boat is so used, and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111). Penalty.

For the definition of a canal boat, see 40 & 41 Vict. c. 60, s. 14, 47 & 48 Vict. c. 75, s. 10, and 57 & 58 Vict. c. 60, s. 745. As to application of penalties, see 47 & 48 Vict. c. 75, s. 8.

In case *default* is made in complying with any of the *regulations* of the Local Government Board or the Education Department, the *master* and the *owner* (if in default) each commit an offence, and are subject to a penalty of 1*l.* recoverable similarly (47 & 48 Vict. c. 75, s. 2). Breach of regulations.

Anyone who *obstructs* a person authorized to enter the boat is subject to a penalty of 2*l.* recoverable similarly. As, also, is the *master* of the boat if he *refuses to produce*, or illegally detains, the *certificate* of registration; or refuses to furnish assistance to the person authorized to enter (40 & 41 Vict. c. 60, ss. 5, 10). Obstruction.

CATTLE.

Cruelty to, see pp. 247—258; *Stealing* and killing with intent to steal, see *post*, p. 665.

CATTLE STRAYING.

In considering the duties of justices as to cattle found straying and as to pound-breach, it is necessary to distinguish between cattle straying (a) on highways generally, (b) on streets in districts to which the provisions of the Town Police Clauses Act are applicable, and (c) on inclosed lands.

(a) If any horse, mare, gelding, bull, ox, cow, heifer, steer, calf, mule, ass, sheep, lamb, goat, kid, or swine is found *straying on or lying about any highway* whatsoever, or across any part thereof, or by the side thereof, except on such parts of the highway as pass over common or waste or uninclosed ground, the *owner* commits an Cattle straying on any highway (a).

offence, in respect of which any person using the highway may properly take action, and the animal may be conveyed to the pound (27 & 28 Vict. c. 101, s. 25).

There would, of course, be no offence committed if cattle were being driven along the road in the ordinary way and were permitted to stop for the purpose of rest. But the words of the section are "straying on *or* lying about," so that the owner would be liable (even although he or his servant were present acting as keeper of the cattle) in case the animals were permitted to lie about and obstruct the highway (*Lawrence v. King*) (c). Nothing in the Act is to be deemed to take away any right of pasturage which may exist on the sides of the road; but the offence will be complete, even when the owner has a right of pasturage over the greensward at the sides, if the cattle are permitted to stray or lie on the metalled part of a road which does not pass over a "common or waste or uninclosed ground" (*Freestone v. Caswell*) (d).

Penalty on
owner of
cattle stray-
ing on
highway.

PENALTY.—FINE not exceeding 5s. for each animal, together with the expenses of returning it to the offender's premises or conducting it to and confining it in the pound; and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111).

But the offender is not liable, in any one case, to pay more than 30s. (*over and above* such expenses and the fees of the pound-keeper), however numerous may be the animals found straying or lying about.

An appeal lies to quarter sessions if the aggregate amount exceeds 5*l.* (25 & 26 Vict. c. 61, s. 47).

Rescue or
pound breach.

Anyone who *releases, or attempts to release*, the impounded animal, or damages or destroys any part of the pound, commits an offence (5 & 6 Will. 4. c. 50, s. 75).

PENALTY.—FINE, not exceeding 20*l.*, and, in default of *payment*, imprisonment, with or without hard labour, according to scale (p. 111). Half the penalty under these Acts goes to the informer and half towards the repair of highways (*ib.* s. 103).

It is submitted that this section is applicable although the animals are not impounded under the General

(c) (1868) L. R. 3 Q. B. 345; 37 L. J. M. C. 78; 18 L. T. N. S. 356; 16 W. R. 966; 32 J. P. 310.

(d) (1869) L. R. 4 Q. B. 517; 38 L. J. M. C. 122; 33 J. P. 566.

Highway Act, but under 27 & 28 Vict. c. 101 (*supra*). The section of the General Highway Act as to impounding (s. 74) was repealed by s. 25 of the Act of 1864.

Appeal against a conviction lies to the quarter sessions (5 & 6 Will. 4, c. 50, s. 105).

(b) In urban sanitary districts, or rural districts to which the Town Police Clauses Act has been applied, if cattle are found *at large in a street* without a keeper, they may be *impounded* by any constable or resident within the jurisdiction, and the owner commits an offence (10 & 11 Vict. c. 89, s. 24).

Cattle at large in streets within the Town Police Clauses Act (b).

PENALTY.—FINE, not exceeding 2*l.* in addition to the expenses of impounding and keeping the cattle; and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111). Appeal lies.

Anyone *who releases, or attempts to release*, the cattle from the pound, or who damages or destroys the pound with intent to procure the unlawful release of the cattle, commits an offence (10 & 11 Vict. c. 89, s. 26).

Rescue or pound breach.

PENALTY.—IMPRISONMENT, *without* hard labour, for not more than THREE MONTHS.

(c) In the case of cattle straying upon *inclosed* ground, the occupier may distrain and hold them until satisfaction is made for any damage done, driving them if he pleases, for safe custody, to any pound overt within the county, not more than three miles away (1 & 2 Ph. & M. c. 12). But he has no right to seize them after tender of sufficient amends, nor may he retain them after like tender made before they have actually reached the pound.

Impounding cattle damage feasant (c).

An attempt to recapture the animals so seized is an *indictable* misdemeanour punishable by fine or imprisonment, but there is also a *summary* remedy before justices, thus:—

Rescue or pound breach

If any person (a) *releases, or attempts to release*, any horse, ass, sheep, swine, or other beast or cattle (as, *e.g.*, cows or heifers, *R. v. Gee*) (e), lawfully seized for the purpose of being impounded in consequence of having been found wandering, straying, lying, or being depastured on any *inclosed* land without the consent of the owner or occupier, or (β) *damages or destroys* any part of the pound, he commits an offence (6 & 7 Vict. c. 30, s. 1).

The jurisdiction of justices is, however, ousted if a question arises as to title to lands, or any interest therein, or as to any bankruptcy, or any execution under the process of a court, or as to an obligation of maintaining walls (s. 2, and cf. *ante*, p. 87).

Penalty.

PENALTY.—FINE, not exceeding 5*l.*, together with reasonable expenses; and, in default of *payment*, imprisonment, with or without hard labour, according to scale (p. 111).

The whole or any part of the penalty may be awarded to the person who distrained, or on whose behalf the distress was made.

As to the *feeding* of impounded cattle, and the penalties for neglect, &c., see *ante*, p. 251.

CHAFF-CUTTING MACHINES.

Special statutory provision is made for the prevention of accidents by chaff-cutting machines which are worked by *any motive power other than manual labour* (60 & 61 Vict. c. 60). It is provided that, so far as is reasonably practicable and consistent with the due and efficient working of the machine.

Feeding-mouth to have fittings to secure safety.

(a) the *feeding-mouth* or *box* of every such implement shall be of such construction, or fitted with such apparatus or contrivance as to prevent the hand or arm of the person feeding the machine from being drawn between the rollers to the knives (s. 1);

Fly-wheel and knives to be securely fenced.

(β) the *fly-wheel* and *knives* shall be kept sufficiently and securely fenced at all times during the working (s. 2).

An OFFENCE is committed by any person who—

- (i.) Permits to be worked a machine (belonging to him or used for his service or benefit) which does not comply with these statutory requirements; or
- (ii.) Being a foreman or other person in charge of a machine which does not comply with the statutory requirements, works it or permits it to be worked; or
- (iii.) During the working of the machine, unnecessarily and without due cause removes any guard or thing provided in compliance with the statutory requirements (s. 3).

PENALTY.—FINE, not exceeding 5*l.*, and, in default of

distress, imprisonment *without* hard labour, according to scale (p. 111).

If in the prosecution of any person to whom the machine belongs, or for whose service or benefit it is used, it is shown that the statutory requirements have not been complied with, such person is to be *deemed to have permitted* the same, unless he satisfy the court that he took all reasonable precautions to secure compliance with the Act (s. 4). A constable, on the instruction of a police officer (not below the grade of an inspector), may at any time, on reasonable suspicion that the Act is not being complied with, enter any premises for the purpose of inspecting a machine (s. 6).

Chaff-cutting machines—*contd.*

Presumption that owner, &c., "permits" the non-compliance.

Entry by constable.

CHAPEL.

See CHURCH AND CHAPEL, *post*, p. 386.

CHILDREN.

Abandonment of Infants.

Whosoever unlawfully *abandons or exposes* a child *under the age of two years*, whereby the life of the child is endangered, or the health of the child has been, or is likely to be, permanently injured, commits an indictable misdemeanour. [Penal servitude, five years.] (24 & 25 Vict. c. 100, s. 27.)

Abandonment or exposure of infants under two years.

It is not necessary that the child should actually suffer injury. Thus, a mother was held to have been properly convicted where she had sent a baby by train to its father, packing it comfortably in a hamper and enjoining the officials to exercise especial care in transit (*R. v. Falkingham*) (*f*). Nor is it necessary that the accused should have had the actual custody of the child. Thus, where the parents were living apart, the mother, who had complete charge of the children, left a child on the steps of the father's house. The father knowingly allowed it to remain there exposed, and was held to have been properly

(*f*) (1870) L. R. 1 C. C. R. 222; 39 L. J. 47; 34 J. P. 149.

convicted, as by law his duty was to provide for the child (*R. v. White*) (*g*).

As to proof of age, see *ante*, p. 206; but if the child appears to the court to have been under two years of age at the date of the commission of the offence, it must be deemed to have been under that age unless the contrary is proved (8 Edw. 7, c. 67, s. 123 (ii.)). The procedure contained in ss. 19—21, 24, 26—32 of the last-cited Act are applicable to proceedings in respect of this offence (see *post*, p. 379).

Defilement of Children.

Defiling girls
under
thirteen.

CRIMINAL
LAW AMEND-
MENT ACT,
1885, s. 4.

Any person who unlawfully and carnally knows any girl under thirteen is guilty of *felony*. [Penal servitude, life.]

Any person who *attempts* to have unlawful carnal knowledge of a girl under thirteen is guilty of a *misdemeanour*. [Imprisonment, two years.]

Neither of these offences is triable (so far as adults are concerned) except at assizes (48 & 49 Vict. c. 69, s. 4).

If the offender is not more than sixteen he may, after trial on indictment, be whipped instead of imprisoned (*ib.*).

The wife of the defendant may be called as a witness either for the prosecution or defence and without the defendant's consent (*ante*, p. 174). As to the admissibility in evidence of a complaint made by the girl shortly after the alleged occurrence, see title "Rape" (*post*, p. 870).

There is express power given, in these cases, to receive the evidence of any child of tender years, although not upon oath, subject to its being corroborated by some other material evidence implicating the accused, and to the court being satisfied that such child has sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth. The child would be liable to proceedings for giving false evidence; and, as the procedure under the Children Act, 1908, applies, written notes of the evidence may thereafter be used as a deposition (see s. 30 of the Act last cited, and *post*, p. 380).

As to the PROCEDURE generally, see *post*, pp. 379—383.

(*g*) (1871) L. R. 1 C. C. R. 311; 40 L. J. M. C. 134; 24 L. T. 637; 19 W. R. 784.

But, *as this is an offence under the Criminal Law Amendment Act*, note that, although the child may appear to have been under the age of thirteen at the date of the commission of the offence, she must not be *presumed* to have been under that age (8 Edw. 7, c. 67, s. 123 (ii.)). As to *proof* of age, see *ante*, p. 206.

Defiling girls under thirteen—*contd.*

It is to be observed that, if the accused is under fourteen years of age, he cannot be tried or convicted unless possibly as a principal in the second degree (*ante*, p. 150; *R. v. Waite (h)*). But as to proceedings for *indecent assault*, see p. 287; and cf. *R. v. Williams (i)*, in which case a boy under fourteen, charged with the defilement of a girl aged nine years, was held properly convicted of indecent assault.

In order to establish the charge of felony, it is not necessary to prove *emissio seminis* (*R. v. Marsden (j)*).

As to the appointment of guardians for girls under sixteen, see 48 & 49 Vict. c. 69, s. 12, and cf. the Custody of Children Act, 1891 (54 Vict. c. 3).

Any person who

(i.) Unlawfully and carnally *knows or attempts* to have unlawful carnal knowledge of any girl *of or above the age of thirteen and under the age of sixteen*; or

Defiling girls between 13 and 16.

(ii.) Unlawfully and carnally *knows or attempts* to have unlawful carnal knowledge of a *female idiot or imbecile woman or girl*, under circumstances which do not amount to rape, but which prove that the offender knew at the time of the commission of the offence that the woman or girl was an idiot or imbecile

Defiling idiots.

is guilty of a *misdemeanour*, triable, in case of an adult, only at assizes. [Imprisonment, two years.] (48 & 49 Vict. c. 69, s. 5.) As to (ii.), see also *post*, p. 869.

CRIMINAL LAW AMENDMENT ACT, s. 5.

The wife of the defendant may be called as a witness either for *the prosecution* or *defence and without the defendant's consent* (*ante*, p. 174).

If the accused is under fourteen he cannot be convicted, except possibly as a principal in the second degree (*ante*, p. 150). But as to a charge of *indecent assault*, see p. 287.

So far as the offence under sub-s. (i.) is concerned,

Evidence under sub-s. (i.).

(h) [1892] 2 Q. B. 600; 41 W. R. 80.

(i) [1893] 1 Q. B. 320; 62 L. J. 69; 41 W. R. 333.

(j) [1891] 2 Q. B. 149; 60 L. J. 172; 39 W. R. 703.

CRIMINAL
LAW AMEND-
MENT ACT,
1885, s. 5
—*contd.*

the information must be laid within *six months* after the commission of the offence (4 Edw. 7, c. 15, s. 27); and it will be *sufficient defence*, under this sub-section of the Criminal Law Amendment Act, 1885, if it is made to appear to the court or jury that the person charged had *reasonable cause to believe* that the girl was of or above the age of sixteen years (48 & 49 Vict. c. 69, s. 5 (i.)).

Although the girl solicits and incites the defendant to the commission of the crime, she does not herself (so it has been held) commit any criminal offence (*R. v. Tyrrell*) (k).

As to the PROCEDURE generally, see *post*, pp. 379—383. But, as this is an offence under the Criminal Law Amendment Act, note that, although the girl may appear to have been under sixteen at the date of the commission of the alleged offence, she must not be *presumed* to have been under that age (8 Edw. 7, c. 67, s. 123 (ii.)). As to *proof* of age, see *ante*, p. 206.

The mere production of the warrant alone, without the information, is not sufficient evidence that the proceedings were commenced within the period limited by the statute (*R. v. Parker*) (l).

If a prosecution for *rape* be commenced within the limited time, the accused may be convicted either on an indictment charging that offence or on an indictment charging the misdemeanour simply (*R. v. West*) (m).

Owners, &c.,
of premises
permitting
defilement of
young girls
thereon.

CRIMINAL
LAW AMEND-
MENT ACT.
s. 6.

Any person who, being the *owner or occupier* of any premises, or having, or acting or assisting in, the management or control thereof, *induces or knowingly suffers* any girl of such age as in the section mentioned *to resort to or be in or upon such premises* for the purpose of being unlawfully and carnally known by any man, whether such carnal knowledge is intended to be with any particular man or generally, is,

(i.) If such girl is *under thirteen*, guilty of *felony*.
[Penal servitude, life.]

(ii.) If such girl is of or above the age of *thirteen and under sixteen*, guilty of a *misdemeanour*. [Imprison-

(k) [1894] 1 Q. B. 710; 63 L. J. M. C. 58; 70 L. T. 41.

(l) (1864) 33 L. J. M. C. 135; 10 L. T. N. S. 463; 12 W. R. 765; L. & C. 459.

(m) [1898] 1 Q. B. 174; 67 L. J. Q. B. 62; 46 W. R. 316.

ment, two years.] (48 & 49 Vict. c. 69, s. 6.) And cf. *post*, p. 377.

Neither of these offences is triable except at assizes.

The husband or wife of the defendant may be called as a witness either for *the prosecution* or *defence* and *without the defendant's consent* (*ante*, p. 174).

Owners, &c.,
of premises
permitting
defilement of
young girls
thereon—
contd.

It will be a *sufficient defence* if it is made to appear to the court or jury that the person charged had *reasonable cause to believe* that the girl was of or above the age of *sixteen years*. Observe as to offence (i.), that it is not a sufficient defence that the accused had reasonable cause to believe the girl to be above *thirteen*.

As to the *PROCEDURE* generally, see *post*, pp. 379—383. But, as these are offences under the *Criminal Law Amendment Act*, note that, although the girl may appear to have been under the specified age at the date of the commission of the alleged offence, she must not be *presumed* to have been under that age (8 Edw. 7, c. 67, s. 123 (ii.)). As to *proof* of age, see *ante*, p. 206.

A woman was held properly convicted as an occupier under this section, although she was the mother of the girl who was carnally known (*R. v. Webster* (n); but cf. *R. v. Merthyr Tydvil* (o)).

Stealing Children.

Everyone commits *felony* who unlawfully, *either by force or fraud*, leads or takes away, or decoys, entices away, or detains, any child *under the age of fourteen years*, with intent to deprive the parent, guardian, or person in lawful charge, of the possession of such child; or with intent to steal any article upon or about the person of such child, to whomsoever such article may belong. So, too, everyone commits felony who, with any such intent, *receives or harbours* any such child, knowing the same to have been, by force or fraud, so led, taken, decoyed, enticed away, or detained. [Penal servitude, seven years; and, if the accused is a male under sixteen, whipping.] (24 & 25 Vict. c. 100, s. 56).

Stealing, &c.,
children
under 14.

The charge cannot, in case of an adult, be tried summarily.

(n) (1885) 16 Q. B. D. 134; 55 L. J. M. C. 63; 53 L. T. N. S. 824; 50 J. P. 456.

(o) (1894) 10 Rep. 189; 38 S. J. 340.

Stealing, &c.,
children
under 14
—*contd.*

The fraud need not be practised on the child itself: it is sufficient if it is practised on the parent or guardian (*R. v. Bellis*) (*p*).

If the child appears to the court to have been under the age of fourteen years at the date of the commission of the alleged offence, she must be presumed to have been under that age *unless the contrary is proved* (8 Edw. 7, c. 67, s. 123 (ii.)). And as to the procedure generally, see *post*, pp. 379—383.

The section protects from prosecution anyone who has acted under a claim of right to the possession of the child, or who is the mother, or has claimed to be the father of an illegitimate child.

It was held in *R. v. Duguid* (*q*) that, even although immunity may attach to the mother of a child, another person may be convicted for conspiring with her to commit an offence under the section.

As to what conduct amounts to “detaining,” where there is no positive evidence as to the whereabouts of the child, and the accused has given different accounts as to how it has been disposed of, see *R. v. Johnson* (*r*).

EMPLOYMENT OF CHILDREN ACT, 1903.

Restriction on
employment
of children
under four-
teen.

Subject to the grant of licences under the Prevention of Cruelty to Children Act, 1904 (*post*, p. 375), this Act *prohibits* the employment of children under fourteen years of age *between 9 P.M. and 6 A.M.* But a local authority may vary the hours either generally or in respect of a specified occupation (3 Edw. 7, c. 45, s. 3). It is further provided that children under eleven shall not be employed in street trading (*ib.*).

Bye-laws
by local
authority.

Wide powers of making bye-laws are, however, given to the local authority, *i.e.*, the borough council where the population of a borough exceeds 10,000; the district council in an urban district of which the population exceeds 20,000; and elsewhere the county council. The extent of these powers as to the nature and conditions of “employment” appears in s. 1, while s. 2 authorizes the making of bye-laws as to “street trading” by persons under the age of sixteen years.

(*p*) (1893) 62 L. J. M. C. 155; 69 L. T. 26; 57 J. P. 441.

(*q*) (1906) 75 L. J. K. B. 470; 94 L. T. 887; 70 J. P. 294.

(*r*) (1884) 50 L. T. 79; 15 Cox, 481; 48 J. P. 760.

“Half-timers” are not to be employed in other occupations; and children under fourteen are not to be employed to lift or move heavy articles, nor in occupations likely to injure life, limb, health, or education (*ib. s. 3*). Parents or guardians who conduce to the commission of an offence are liable to the penalties (*ib. s. 5 (ii.)*).

Employment
of children.
ACT OF 1903.

The PENALTY for employing a child or young person in contravention of the Act, or of a bye-law, is 2*l.*, recoverable by distress and, in default, imprisonment without hard labour, according to scale (p. 111); for a *second* offence, 5*l.*

Penalties.

The PENALTY attaching to breach of a bye-law (as to “street trading”) by a young person is 1*l.*; and, in case of a *second* offence, 5*l.*; or (if he be under fourteen years) an offender may be sent to an industrial school, or committed to the charge of “some fit person” (*ib. s. 5 (i.)*, (*iii.*), (*iv.*)).

Employers are protected against the acts of their workmen or agents where the employers have used “due diligence” to comply with the Act; and parents are rendered liable to penalties if they make false representations as to age, or produce false certificates (*ib. s. 6*).

Cf. *Robinson v. Hill*, [1910] 1 K. B. 94; 26 T. L. R. 17; 73 J. P. 514.

The information must be laid within *three* months after the commission of the offence (*ib. s. 7*).

Limitation
of time.

A justice may authorize the *entry* (within forty-eight hours), by an officer of the local authority, of a place where a child is believed to be employed in contravention of the Act. If the officer be obstructed, the offender is liable to a penalty of 20*l.* (*s. 8*).

Justice's order
authorizing
entry.

If the child is alleged in the charge to be under a specified age, and *appears* to the court to be under that age, such child is *to be deemed* to be under that age, *unless the contrary is proved* (4 Edw. 7, c. 15, s. 17).

Presumption
of age of
child.

As to the employment of children in *Coal Mines*, see the Coal Mines Regulation Acts, 1887—1905; and see EDUCATION, *post*, pp. 432, 435.

DANGEROUS PERFORMANCES ACTS, 1879 AND 1897.

Any person commits an offence who causes a *male* child or young person under the age of *sixteen years*, or a *female* child or young person under the age of *eighteen years*, to take part in *any public exhibition or performance*, whereby, *in the opinion of a court of summary jurisdiction*,

Dangerous
Performances
Acts of 1879
and 1897.

Dangerous
Performances
Acts—*contd.*

the life or limbs of such child or young person are endangered. The *parent or guardian*, or other individual who has the lawful custody of the child or young person, commits a like offence if he *aids and abets* the person who causes the child or young person to perform (42 & 43 Vict. c. 34, s. 3; 60 & 61 Vict. c. 52, s. 1).

If the child or young person appears to the court to have been under the specified age, at the date of the commission of the alleged offence, such child or young person must be presumed to have been under that age *unless the contrary is proved* (8 Edw. 7, c. 67, s. 123 (ii.)). And as to the procedure generally, see *post*, pp. 379—384.

Except where an accident *causing actual bodily harm* occurs to a child or young person, no prosecution may be instituted for an offence against these Acts without the *consent in writing* of the chief officer of police of the police area where the offence is committed (60 & 61 Vict. c. 52, s. 2; 53 & 54 Vict. c. 45). The consent must be given *in writing* before the information is laid (cf. *Thorpe v. Priestnall*, *post*, p. 894).

Penalty.

PENALTY.—FINE, not exceeding 10*l.*, and, in default of distress, imprisonment, *without hard labour*, according to scale (p. 111).

If the child is *actually injured* during the public performance the employer may be *indicted* for an assault; and the court would then have power to direct the defendant to pay compensation (not exceeding 20*l.*) to the child or for his benefit (42 & 43 Vict. c. 34, s. 3).

SAFETY OF CHILDREN AT ENTERTAINMENTS (CHILDREN ACT, 1908, s. 121.)

Safety of
children at
entertain-
ments.

There is special provision for the SAFETY of children where an "entertainment" takes place in a building *other than a private dwelling house* and the number of children attending *exceeds one hundred*. The statute applies to any such "entertainment *for children*," and to any such "entertainment at which the *majority* of the persons attending *are children*," provided that *access to any part* of the building in which the children are accommodated *is by stairs* (8 Edw. 7, c. 67, s. 121). A constable may enter any building in which he has reason to believe such an entertainment is being, or is about to be, provided (*ib.* s. 121 (iv.)).

Where the statute applies, it is the duty of the PERSON WHO PROVIDES THE ENTERTAINMENT to keep stationed wherever necessary a sufficient number of properly instructed *adult attendants* to

Duty to make provision for safety of children.

(a) Prevent more children or other persons being admitted (to any part of the building to which access is by stairs) than such part can properly accommodate.

(β) Control the movement of the children and other persons whilst entering and leaving such part.

(γ) Take all other reasonable precautions for the safety of the children.

If the OCCUPIER permits the building to be used for hire or reward, he, too, must "take all reasonable steps to secure the observance" of the Act.

PENALTY.—FINE, not exceeding 50*l.*, and in default of distress, imprisonment *without* hard labour, according to scale (p. 111). For a second or subsequent offence the maximum penalty is 100*l.* (*ib.* s. 121 (iii.)).

Penalty.

If the building is licensed by the Lord Chamberlain or by the county council under enactments relating to theatres, or to music or dancing, it is the "duty" of the county council to prosecute in case "any contravention" is "alleged to have taken place"—as to other buildings, the "duty" devolves upon the "police authority" (*ib.* s. 121 (v.)).

Duty to prosecute.

In case of conviction the licence may be revoked by the authority which granted it (*ib.* s. 121 (iii.)).

CRUELTY TO CHILDREN.

It is a misdemeanour *at common law* for a person to *refuse or wilfully neglect* to provide food, bedding, shelter, and proper necessities, so as to *injure the health* of a child, apprentice, or servant, or any other person for whom he is bound by contract or by duty to provide such things, the person whose health is so injured being unable to provide them for himself (*R. v. Friend*) (*t.*). But, so far as children are concerned, proceedings are now almost invariably taken under the Acts for the Prevention of Cruelty to Children.

Wilfully neglecting to provide necessities for child, servant, &c.

Ss. 19—24 and 26—32 of the Children Act, 1908, are

Application of PROCEDURE

(*t.*) (1802) R. & R. 20.

under the
CHILDREN
ACT, 1908.

as we have seen, applicable where the charge is abandonment of a child under two (*ante*, p. 363); abduction of a girl under sixteen (*ante*, p. 205); child stealing (*ante*, p. 367); common assault on child or young person (*ante*, p. 280); aggravated assault, where girl is under sixteen or boy under fourteen (*ante*, p. 283); indecent assault on a child or young person under sixteen (*ante*, pp. 208, 287); offences under the Dangerous Performances Acts (*ante*, p. 369). The procedure also extends to all offences against a child or young person under the Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69); to the offence of manslaughter when the victim is under sixteen years of age, and, indeed, to "any other offence involving bodily injury to a child or young person" (8 Edw. 7, c. 67, First Schedule).

4 EDW. 7,
c. 15.

8 EDW. 7,
c. 67.

Offence of
cruelty to
children
under 16.

Form of
information,
post, p. 1221.

Meaning of
cruelty.

THE PREVENTION OF CRUELTY TO CHILDREN AND YOUNG PERSONS (PREVENTION OF CRUELTY TO CHILDREN ACT, 1904; CHILDREN ACT, 1908, PART II.).

Any person over the age of sixteen years who has the *custody, charge, or care* of a child or young person *under the age of sixteen years*, and commits an act of *cruelty* towards such child is guilty of a *misdemeanour* (8 Edw. 7, c. 67, s. 12).

Cruelty consists in *wilfully (tt)* assaulting, ill-treating, neglecting, abandoning, or exposing a child or young person, or causing or procuring such child or young person to be assaulted, ill-treated, neglected, abandoned, or exposed, in a manner *likely to cause such child or young person unnecessary suffering or injury to its health* (including injury to or loss of sight, or hearing, or limb, or organ of the body, and any mental derangement). Failure to provide adequate food, clothing, medical aid, or lodging, on the part of a parent or other person legally liable to maintain the child or young person is to be deemed neglect likely to cause injury to health. So, too, if, in case of inability to provide, there is failure to procure food, clothing, medical aid, or lodging under the Acts relating to the relief of the poor (*ib.*). Moreover, where an infant under three is *suffocated* (otherwise than by disease or a

(*tt*) A man acts "wilfully" when he knows what he is doing, intends to do what he is doing, and is a free agent (per *Bowen*, L.J., 31 Ch. D. at p. 174).

foreign body in the throat or air passages), any person over sixteen in bed with the infant is to be deemed guilty of *neglect* within the statute if such person went to bed "under the influence of drink" (*ib.* s. 13).

The parent (*u*) or legal guardian (*i.e.*, the person appointed, according to law, to be guardian by deed or will, or by order of a court) or the person legally liable to maintain the child or young person, is presumed to have the *custody* of the child. As between father and mother, the father does not cease to have the custody "by reason only that he has deserted, or otherwise does not reside with, the mother and child or young person" (8 Edw. 7, c. 67, ss. 38 (ii.), 131).

Any person to whose charge a child or young person is committed by a person who has its custody is to be presumed to have *charge* of the child or young person (*ib.*)

Any other person having actual possession or control is presumed to have the *care* of the child or young person (*ib.*).

A conviction may ensue (*a*) although *actual* suffering or injury to health, or the *likelihood* thereof, was obviated by the action of a third person, or (*β*) notwithstanding the *death* of the child or young person in respect of whom the offence is committed (*ib.* s. 12 (ii.) (iii.)).

A person charged with *cruelty* may be proceeded against by way of indictment or summarily. As to the "procedure" under Part II. of the Act of 1908 (ss. 12—38), see *post*, pp. 377—383. The punishment is on

- (a) CONVICTION ON INDICTMENT.—FINE, not exceeding 100*l.*; or, alternatively, or in addition to the fine, or in default of *payment* thereof, IMPRISONMENT, with or without hard labour, for not more than TWO YEARS.
- (b) SUMMARY CONVICTION.—FINE, not exceeding 25*l.*; or, alternatively, or in addition to the fine, or in default of *payment* thereof, IMPRISONMENT, with or without hard labour, for not more than SIX MONTHS (*ib.* s. 12 (i.)).

Penalty for cruelty.

It is stated by some writers that the court may, on

(*u*) As to the meaning of "parent," see 4 Edw. 7, c. 15, s. 23 (i.). The word, *in that Act*, includes step-parent, a person cohabiting with the parent, a guardian or other person liable by law to maintain the child; but the two Acts are not incorporated.

summary conviction, sentence to six months' imprisonment, and, in default of payment of a fine, to a further six months, making twelve months in all. It is, however, open to question whether justices can impose six months' imprisonment in default of payment of a fine; and it is conceived that it would be better to adopt the ordinary scale (p. 111). As to sending a "habitual drunkard" to a retreat *with his own consent*, see *post*, p. 384, and *ib. s. 26*.

Pecuniary
interest in
death of
injured child
or young
person.

If it is proved that the defendant was directly or indirectly "interested" in money accruable or payable on the death of the child or young person, and knew that such money was accruable or becoming payable, the court in determining the sentence "shall take into consideration" this fact; and, indeed, in the case of *conviction on indictment*, the penalties may be increased where the person indicted is shown to be interested in moneys payable on the death of the injured child or young person (8 Edw. 7, c. 67, s. 12 (v.)).

A person is to be deemed "interested" if he has a share in or any benefit from the payment of the money, though not a person to whom it is legally payable; and a copy of an insurance policy certified as true by an officer or agent of the company is made *prima facie* evidence (*ib. s. 12 (vi.) (vii.)*).

Defendant
must be given
the option of
trial by jury.

It is important to observe that, as a court of summary jurisdiction is empowered to inflict imprisonment for *more than three months* without any option of fine, the offender has the right to insist on being tried by a jury (*ante*, p. 63). The court must, therefore, *before the charge of cruelty is inquired into*, inform the defendant of the existence of this right, and the fact that this course has been adopted is generally stated alike in the conviction and in the commitment. Even if the defendant wish to be tried summarily, the court may still commit him to be tried on indictment if it is thought desirable so to do.

Conviction
for "cruelty"
on charge of
man-
slaughter.
Offences re-
lating to
begging and

Upon a charge of manslaughter where a victim under sixteen was in the custody, charge, or care of the accused, the jury may find the defendant guilty of an offence of *cruelty* within this section (*ib. s. 12 (iv.)*).

A court of summary jurisdiction may inflict a FINE of 25*l.*, or, alternatively, or in addition to the fine, or in default of payment thereof, IMPRISONMENT, with or

without hard labour, for not more than THREE MONTHS, in respect of the commission of certain offences relating to the employment of children under sixteen, and specified in 8 Edw. 7, c. 67, s. 14, and 4 Edw. 7, c. 15, s. 2. There is no provision for distress; and as to the length of imprisonment in default of payment of the fine, see p. 111. The OFFENCES may be summarized as follows:—An OFFENCE is committed by any person who *causes or procures* (or, if the defendant has the custody, charge, or care of the child or young person, *allows*) a juvenile to be—

the *employ-*
ment of
children.
Penalty.

(a) *Where the child or young person is under sixteen years:*

- (i.) In any street, premises, or place for the purpose of *begging* or receiving alms, or inducing the giving of alms, whether or not there is any pretence of singing, playing, performing, offering anything for sale, or otherwise (8 Edw. 7, c. 67, s. 14 (i.)). On a charge of “allowing,” if it is shown that the defendant allowed the child or young person to be in the street, &c., and that the child, &c., was, in fact, there for the purpose alleged, the defendant is to be *presumed* to have *allowed* him to be there *for that purpose*, unless the contrary is proved (*ib.* s. 14 (ii.)). The provision as to this presumption is not contained in the Act of 1904; and, therefore, as the two Acts are not incorporated, it does not appear to apply to (a) (ii.), (β), or (γ), *infra*.

Children
under
SIXTEEN.

Form of
information,
post, p. 1221.

- (ii.) In any place for the purpose of being *trained as an acrobat*, contortionist or circus performer, or of being trained for any exhibition or performance which is in its nature dangerous (4 Edw. 7, c. 15, s. 2 (d)). A licence may, however, be granted by a petty sessional court (subject to such restrictions and conditions as seem desirable) in the case of a child over *ten* years of age if the court be satisfied as to the fitness of the child and the provision made for the training. The applicant must give seven clear days' notice to the chief of police, who may be represented at the hearing; and the licence, when made, is subject to variation or rescission by the court. The licensee must, under a penalty of 5*l.*, send a

Licence by
justices.

Boy under
FOURTEEN,
or girl under
SIXTEEN.

copy of the licence forthwith to the local authority in whose district it is to take effect (*ib. s. 3*).

(β) *Where the child is a boy under fourteen or a girl under sixteen years (x) :*

In any street, or in any premises licensed for the sale of intoxicants (unless the premises are licensed for public entertainments), *between 9 P.M. and 6 A.M.* for the purpose of singing, playing or performing, or being exhibited for profit, or offering anything for sale (4 Edw. 7, c. 15, s. 2 (b)). "Street" in the Act was defined as "a highway or other public place," but this definition of "street" was repealed as from April 1st, 1909 (8 Edw. 7, c. 67); and, as the definition contained in s. 131 of the Act last cited is not incorporated in the Act of 1904 (*ante*, p. 181), the word would appear to be undefined. The local authority may by bye-law extend or restrict the hours before-mentioned (4 Edw. 7, c. 15, s. 2 (ii)).

Licence by
justices.

We have already seen (*ante*, p. 368) that, subject to the grant of *licences* under the Act of 1904, the employment of children under *fourteen* is prohibited between 9 P.M. and 6 A.M., or such other hours as may be fixed by bye-laws; and, as no licence can be granted for children under *ten*, such children can not be employed at all during those hours. A licence may, however, be obtained, if it is thought desirable, from a petty sessional court, authorizing the employment of a child above *ten* years of age in premises licensed for public entertainments, or in a circus or other place of public amusement, subject to such conditions as the court may think fit (see under (a)).

Children
under
ELEVEN.

(γ) *Where the child is under the age of eleven years (x) :*

At any time in a street or in premises licensed for the sale of intoxicants, or in premises licensed for

(x) This section (s. 2) does not apply in the case of any occasional sale or entertainment the proceeds of which are wholly applied for the benefit of any school or to any charitable object, unless such sale or entertainment is held in premises licensed for the sale of intoxicants but not for public entertainments. If it is desired to hold the sale or entertainment in such premises as aforesaid, a special exemption from the provisions of the section must be granted by two justices.

public entertainments, or in a circus or other place of public amusement to which the public are admitted by payment, for the purpose of singing, playing or performing, or being exhibited for profit, or offering anything for sale (4 Edw. 7, c. 15, s. 2(c)). A licence may, however, be obtained, if it is thought desirable, from a petty sessional court, authorizing the employment of children above *ten* years of age in premises licensed for public entertainments, or in a circus or other place of public amusement, subject to such conditions as the court may think fit (*ib.* s. 3; see under (a)).

Children
under
ELEVEN.

Licence by
justices.

The PROCEDURE under Part II. of the Children Act, 1908 (ss. 12—38), is set forth, *post*, pp. 379—384; but as the offences (a) (ii.), (β), and (γ), *ante*, pp. 375, 376, are created by the Act of 1904 (4 Edw. 7, c. 15), the procedure in respect of such offences will be regulated by the earlier Act, as follows: Evidence of accused person (s. 12); evidence of child of tender years (s. 15); presumption of age of child (s. 17); mode of charging offences, &c. (s. 18); appeal to quarter sessions (s. 19); and evidence of wages (s. 24).

Procedure.

Other Offences under Part II. of Act of 1908 in relation to Children and Young Persons.

If any person over sixteen years of age who has the custody, charge, or care of a child under the age of *seven* years *allows* the child to be in any room containing an open firegrate not sufficiently protected to guard against the risk of the child being burnt or scalded, without taking reasonable precautions against that risk, and by reason thereof the child is killed or suffers serious injury, such person is liable on summary conviction to a PENALTY not exceeding 10*l.*, recoverable by distress, and, in default, imprisonment without hard labour, according to scale (p. 111; 8 Edw. 7, c. 67, s. 15). This is not to affect any process by indictment (*ib.*).

Exposing a
child under 7
to risk of
burning.

Form of
information,
post, p. 1222.

It is a misdemeanour for any person, who has the custody, charge, or care of a boy or girl between the ages of *four* and *sixteen*, to allow such boy or girl "to reside in or to frequent a brothel" (*ib.* s. 16). The PENALTY is a FINE not exceeding 25*l.*, or alternatively, or in default of payment of such fine, or in addition thereto, to IMPRISONMENT, with or without hard labour, for not more than SIX MONTHS.

Allowing
child between
4 and 16 to
reside in
brothel.

This misdemeanour may be prosecuted either on indictment or summarily; but if it is thought fit to proceed summarily, the accused must AT THE OUTSET be given the OPTION OF TRIAL BY JURY. Upon a trial under 48 & 49 Vict. c. 69, s. 6 (*ante*, p. 366), the accused may be found guilty of this offence.

Causing or encouraging seduction or prostitution of girl under 16.

It is a misdemeanour, punishable *on indictment* with two years' imprisonment, for anyone who has the custody, charge, or care of a girl under the age of sixteen years to cause or encourage her seduction or prostitution. If the intercourse is conducted to, by knowingly allowing the girl to consort with, or to enter or "continue in the employment of, any prostitute or person of known immoral character," this is deemed a "causing or encouraging," as the case may be, within the statute (*ib.* s. 17).

Recognizance of parent or guardian.
(*cf. ante*, p. 191.

If a court of summary jurisdiction is satisfied, on the complaint of any person, that a girl under sixteen is, with the *knowledge* of her parent or guardian (*i.e.*, person for the time being having the charge of or control over her), "exposed to the risk of seduction or prostitution, or living a life of prostitution," the court may require a recognizance under the Summary Jurisdiction Act, 1879, to secure the "due care and supervision" of the girl (*ib.* s. 18).

Right of parent, &c., to punish.

Nothing in Part II. of the Children Act, 1908, is to be construed "to take away or affect the right of any parent, teacher, or other person having the lawful control or charge of a child or young person to administer punishment to such child or young person" (*ib.* s. 37).

Vexatious Indictments Act.

All misdemeanours under Part II. (*i.e.*, ss. 12—38) of the Children Act, 1908 (8 Edw. 7, c. 67) are within the Vexatious Indictments Act (*ib.* s. 35).

Apparent age may be proved incorrect.

Where a person is charged with an offence under the Children Act, 1908, in respect of a person *apparently* under a specified age, it is a defence to prove that the person was *actually* of or over that age (*ib.* s. 123 (iv).)

Appeal to quarter sessions.

Appeal lies to quarter sessions (under Part II. of the Act) against convictions, and decisions on applications for orders committing to the care of other persons or orders for contribution to maintenance (*ib.* s. 33).

PROCEDURE UNDER CHILDREN ACT (PART II.), 1908, AND IN RESPECT OF OFFENCES MENTIONED IN FIRST SCHEDULE TO THAT ACT.

The following provisions relate to the procedure in respect of offences within Part II. of the Children Act, 1908 (ss. 12—38, cf. *ante*, pp. 372—378), and of offences within the First Part of the Schedule, *i.e.*, “abandonment of child under two years”; “abduction of girl under sixteen”; “child stealing”; “common, aggravated, indecent, or unnatural assaults on young persons”; “offences under the Dangerous Performances Acts” (*ante*, p. 369); “charges under the Criminal Law Amendment Act, 1885” (48 & 49 Vict. c. 69); “manslaughter” of children or young persons, and all other offences “involving bodily injury” to them.

If the person by or in respect of whom an offence (*except an offence under the Criminal Law Amendment Act, 1885*) was committed is *alleged* to be a child or young person, or under or above a specified age, and he *appears to the court* to have been at the date of the commission of the alleged offence a child or young person, or under or above the specified age, this is to be presumed to be fact unless the contrary is proved (8 Edw. 7, c. 67, s. 123 (ii.)). It is no defence to prove that the person alleged to be a “child” was a “young person,” or *vice versâ*, where the offence would have been constituted if the allegation had been correctly made (*ib.* s. 123 (iii.)).

Presumption
as to age.

The person charged is competent but not compellable to give evidence, and the wife or husband of such person may be required to attend to give evidence as an ordinary witness in the case, and without the consent of the person charged (*ib.* s. 27). See *ante*, p. 173.

Evidence of
accused
person or
his wife.

If a justice is satisfied by the evidence of a duly qualified practitioner that the attendance of a child or young person (in respect of whom an offence is alleged) would involve serious danger to life or health, he may take a deposition on oath. He must subscribe the deposition, and add thereto a statement of his reason for taking it, of the day when and the place where it was taken, and of the names of the persons (if any) present. If the deposition relates to an offence in respect of which there has already been a committal for trial, the justice must transmit it, with his statement,

Extension of
power to take
deposition of
child or young
person.

to the officer of the court to which the accused has been committed; otherwise, to the clerk of the peace of the county or borough in which it was taken (*ib.* s. 28). The deposition may, if necessary, be afterwards used at the trial on indictment if it is proved that the person against whom it was intended to be used had *reasonable notice* of the intention to take it *served* upon him, and that he or his advocate had (or might have had if he had chosen to be present) an opportunity of cross-examining. Such deposition, or any deposition of such a child or young person taken under the Act of 1848 (*ante*, p. 127), may be so used, on a charge of *cruelty* or an offence in the "schedule," if it appear that the attendance of the witness would involve "serious danger to life or health" (*ib.* s. 29).

Evidence of
child of
tender years.

If a child of tender years is tendered as a witness, its evidence may be taken *without oath* if the court be of opinion that, although the child does not understand the nature of an oath, it is "possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth." The written notes may then be used as a deposition; but, if such child were called for the prosecution, there can be no conviction unless the evidence be "corroborated by some other material evidence in support thereof implicating the accused." The child is liable to be punished for wilfully giving false evidence, as though charged with perjury (*ib.* s. 30; and see *ante*, p. 128).

Power to
proceed in
absence of
child, &c.

If the court is satisfied that the attendance of the juvenile, in respect of whom the charge is made, is "not essential to the just hearing of the case," the case may proceed in the absence of such child or young person (*ib.* s. 31).

Form of
information
and summons.

An information or summons may charge the offence in respect of two or more children or young persons, but there cannot be separate penalties except upon separate informations (*ib.* s. 32 (i.)). So it may charge a person as having the "custody, charge or care" alternatively or together, or may charge the accused with assault, ill-treatment, neglect, &c., together or separately, &c., but, when the offences are charged together, there can be but one penalty (*ib.* s. 32 (ii.)). In case of summary conviction, the offence must have been wholly or

partly committed within six months before the information was laid, but evidence may be taken of acts contributing to constitute the offence and committed previously (*ib. s. 32 (iii.)*). In case of a continuous offence it is not necessary to specify "the date of the acts" (*ib. s. 32 (iv.)*).

A constable may take into custody *without warrant* a person who (*a*) within his view commits an offence if the offender's name and residence are unknown to the constable and cannot be ascertained by him, or (*β*) the constable has reason to believe has committed *cruelty* or a "scheduled" offence, if the constable has reasonable ground for believing that the offender will abscond, *or* if his name and address are unknown to and cannot be ascertained by the constable. The prisoner must be released on recognizance, with or without sureties, unless the officer in charge of the police station "believes" that the release would tend to defeat the ends of justice or to cause injury or danger to the child (*ib. s. 19*).

Arrest
without
warrant.

If there is reason to believe that an offence has been committed, the child or young person may be taken to a "place of safety" (*i.e.*, workhouse, police station, hospital, surgery, or "other suitable place" the occupier of which will allow temporary reception). A juvenile so taken by a constable or any person "authorized by a justice," or a juvenile who "seeks refuge" in such a place, may be there detained until he can be brought before the court. A court of summary jurisdiction or any justice, if satisfied that an offence "has been committed in respect of" such juvenile, may make "such order as circumstances require for the care and detention of the child, &c., until a reasonable time has elapsed for a charge to be made against some person"; and, if the charge is made, until it has been determined. In case of conviction, the court may extend the order for not more than *twenty-one days* and "such order may be carried out notwithstanding that any person claims the custody of the child, &c." (*ib. ss. 20, 131*).

Detention of
child, &c., in
"place of
safety."

If a person, having the "custody, charge or care" of a child or young person, is convicted, *or* committed for trial, in respect of one of the offences with which we are dealing, *or* is bound over to keep the peace towards the child, &c., an ORDER may be made committing the child or young person to the care of a relative or other "fit

Disposal of
child, &c.,
by order of
court.

Disposal of
juvenile—
contd.

person" (*xx*) (willing to undertake such care) *until the age of sixteen, or for any shorter period*. The custodian must, if possible, be of the "religious persuasion to which the child or young person belongs," or he must give an undertaking that the child, &c., shall be "brought up in accordance with its own religious persuasion." Elaborate provision is made for "transfer" so as to enforce the "religious persuasion" condition (*ib.* ss. 21, 23). This order may be made by the court convicting, committing for trial or binding over, without any new proceedings, and it may be made either at the time or "at any other time." It may, too, be made by "any petty sessional court before which any person may bring the case." But, if the child, &c., has a *parent or legal guardian* (*i.e.*, a guardian appointed, according to law, by deed or will or by order of court) who can be found, no such order can be made unless the parent or guardian "has been convicted of or committed for trial for the offence, or is under committal for trial for having been, or has been proved to the satisfaction of the court making the order to have been, party or privy to the offence, or has been bound over to keep the peace towards the child or young person" (*ib.* s. 21 (ii)).

The order must be in writing and may be made in the absence of the juvenile; while the consent of any person to "undertake the care" must be proved "in such manner as the court may think sufficient to bind him" (*ib.* s. 21 (iii)). The court, or "any court of like jurisdiction," may of its own motion, or on the application of any person, from time to time by order renew, vary or revoke any such order (*ib.* s. 21 (i)). If the order is made in respect of a person committed for trial, it becomes void if he be acquitted or the case dismissed for want of prosecution (*ib.* s. 21 (iv)). The Secretary of State may authorize the "emigration" of the child (*ib.* s. 21 (vi)).

(Contribution
order for
maintenance
of child com-
mitted to care
of relative,
&c.

On the complaint or application of the person to whose care the juvenile is committed, either at the time or subsequently, an order to *contribute to the maintenance* of the juvenile may be made (by any court having power to commit) on the parent or other person liable to maintain the juvenile, as though it had been sent to a certified

(*xx*) "Fit person" includes any society or body corporate established for the reception or protection of poor children or the prevention of cruelty to children (8 Edw. 7, c. 67, s. 38).

school under Part IV. of the Children Act, 1908 (see *ante*, p. 185), but the weekly amount of contribution is *not to exceed* 1*l.* (*ib.* s. 22). If, however, the care of the child is only given on a "committal for trial," no contribution order can be made prior to the trial (*ib.* s. 22 (iv.)). In case any pension or income capable of being attached is payable to the parent, &c., the court may (after giving the person by whom it is payable an opportunity of being heard) attach part of the pension or income and direct it to be paid to a person named (*ib.* s. 22 (v.)). The order for *contribution* may be made by "any court before which a person is charged with an offence *under this part of this Act* (*i.e.*, Children Act, 1908, ss. 12—38) and without regard to the place in which the person to whom the payment is ordered to be made may reside" (*ib.* s. 22 (vi.)).

It is an OFFENCE, punishable with a FINE of 20*l.* or with TWO MONTHS' IMPRISONMENT with hard labour, knowingly to assist or induce (directly or indirectly) a juvenile to escape from the person to whose care he is committed, or knowingly to take part in harbouring or concealing an escaped juvenile or in preventing its return (*ib.* s. 22 (i.)).

After information on oath (by a person who appears to be acting in the interests of a child or young person) that there is reasonable cause to suspect that the child, &c., has been assaulted, ill-treated, &c., within the jurisdiction, or that one of the offences with which we are now dealing has been committed, a justice may issue a *warrant* authorizing a *search* for, or the *removal* of the child, &c. (who need not be named in the warrant), and its detention in a place of safety (*cf. ante*, p. 381) until it can be brought before a court. The court may then commit the child, &c., to the care of a relative or other fit person as though the person in whose care it was had been committed for trial (*ib.* s. 24 (i.) (v.)). The justice may, by the same warrant, authorize the apprehension of the suspected offender, and the constable may (if need be by force) enter any house, &c., specified in the warrant (*ib.* s. 24 (ii.) (iii.)). The person who laid the information may accompany the constable, unless the justice otherwise directs; and the constable may also be accompanied by a duly qualified medical practitioner, if the justice so directs (*ib.* s. 24 (iv.)).

Power is given to direct the visitation and inspection

Harbouring juvenile escaped from care of relative, &c., or assisting in escape.

Search warrant.

Visitation of "Homes."

of institutions for the reception of poor children or young persons supported wholly or partly by voluntary subscriptions, and a PENALTY of 5*l.* is imposed in case a visitor appointed by the Secretary of State is "obstructed" (*ib.* s. 25).

Habitual
drunkards.

If the offender (on a charge of "cruelty" or of one of the offences in the schedule) is the parent (or person living with the parent) and is a "habitual drunkard," the court may, *with his consent*, order his detention for two years, or less, in a "retreat" under the Inebriates Acts, 1879 to 1900 (*ib.* s. 26).

Proceedings
by guardians.

As to the institution of proceedings by a board of guardians for an offence in relation to a juvenile, see *ib.* s. 34.

CHIMNEY-SWEEPS.

Every chimney-sweep who employs any journeyman, assistant, or apprentice, must hold a police certificate, renewable annually. The holder may be deprived of his certificate during the residue of the current year upon conviction for either of the offences (c) or (d) hereinafter mentioned; and, if an uncertificated sweep is so convicted, the court may disqualify him for one year from obtaining a certificate (38 & 39 Vict. c. 70, ss. 6, 20). No person under sixteen may be apprenticed to a chimney-sweep (3 & 4 Vict. c. 85, s. 3).

Offences as to
certificates.

(a) If a sweep carries on his trade without a necessary certificate; or, if, having a certificate, he refuses to produce it and allow it to be copied when required by anyone for whom he acts or offers to act, or by a justice or a constable, he becomes liable to a penalty of 10*s.* for the first, and 20*s.* for a subsequent offence. So, too, he becomes liable to a penalty of 10*s.* if he fails to give his name and address when so required, or gives a false name or address; and to a penalty of 20*s.* if he lends or borrows a certificate (38 & 39 Vict. c. 70, ss. 15, 16, 17, 18). These penalties are recoverable by *distress*, and, in default, imprisonment, *without* hard labour, according to scale (p. 111).

Fraud in
procuring
certificate.

(b) Any person who knowingly takes part in the making of any false representation on an application for a certificate; or, in fabricating or altering a

certificate ; or, in the production of a fabricated or altered certificate, commits an offence (38 & 39 Vict. c. 70, s. 19).

PENALTY.—FINE, not exceeding 2*l.*, and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111).

And, for a *second* or subsequent offence, the defendant may, in addition to or in lieu of the money penalty, be *imprisoned*, with or without hard labour, for not more than *six months*.

On the trial for a *second* or subsequent offence, the defendant must, therefore, be given the OPTION OF TRIAL BY JURY. As to the procedure to be adopted, see *ante*, p. 65.

(c) Any person commits an offence who compels, or knowingly allows, a child or young person under twenty-one to ascend or descend a chimney, or enter a flue, for the purpose of sweeping or coring the same, or extinguishing fire (3 & 4 Vict. c. 85, s. 2 ; 27 & 28 Vict. c. 37, ss. 9, 11). The defendant must, AT THE OUTSET, be given the OPTION OF TRIAL BY JURY. Proof of the age of the child or young person lies on the defendant ; cf. *ante*, p. 206. Appeal lies to quarter sessions (3 & 4 Vict. c. 85, s. 11).

Allowing minors to sweep chimneys.

PENALTY.—FINE, not exceeding 10*l.*, and, in default of *distress*, imprisonment, with or without hard labour, according to scale (p. 111).

Or, IMPRISONMENT, with or without hard labour, for not more than SIX MONTHS.

- (d) Every chimney-sweep commits an offence if he
- (i.) employs a child *under ten* to do any work in the business, elsewhere than in his house or place of business, or in a yard or building connected therewith ; or
 - (ii.) enters a building for the purpose of sweeping chimneys or extinguishing a fire therein, and causes or knowingly allows a person *under sixteen* in his employ, or under his control, to enter before, with, or after him, into any part of the building, or to be therein during any part of the time that he continues therein for any such purpose (27 & 28 Vict. c. 37, ss. 6, 7).

Employment of young persons.

Proof of age lies on the defendant ; cf. *ante*, p. 206.

PENALTY.—FINE, not exceeding 10*l.*, and, in default of *distress*, imprisonment, with or without hard labour, according to scale (p. 111).

But see further, as to the employment of children, the statute of 1903 (3 Edw. 7, c. 45), cited *ante*, p. 368.

Appropriation
of penalty.

Half the penalty under (c) or (d) goes to the informer and half to the overseers of the poor of the defendant's parish.

Sweeps ring-
ing door bells,
&c.

Penalties not exceeding 10*s.* for a first, and 1*l.* for a subsequent offence are imposed on any person who, for the purpose of soliciting employment as a chimney-sweeper, knocks at houses from door to door, *or* rings a bell, *or* uses any noisy instrument, *or* to the annoyance of any inhabitant thereof rings the door bell of a house, *or* causes anyone to do any of such acts (57 & 58 Vict. c. 51). Merely shouting in the street is not prohibited by the statute. The penalties are recoverable by *distress*, and, on default, imprisonment *without* hard labour, according to scale (p. 111).

CHURCH AND CHAPEL.

Maliciously
disturbing
congrega-
tions, &c.

In case any person *maliciously* or *contemptuously* disquiets or disturbs any meeting, assembly, or congregation of persons lawfully assembled for religious worship, *or* misuses any preacher, or teacher, or any of the persons so assembled, whether in a cathedral, church, chapel, or other meeting-place, he may be brought before a justice and, on proof by two or more witnesses, ordered to find *sureties*, and in default committed to prison till the quarter sessions, and then, on conviction, mulct in a penalty (52 Geo. 3, c. 155, s. 12; 9 & 10 Vict. c. 59, s. 4, and other earlier statutes). But the usual and more convenient course is to proceed *summarily* under 23 & 24 Vict. c. 32, whereby it is provided that, if any person is guilty of *riotous, violent, or indecent* behaviour in any *church or chapel* of the Church of England, or in any place duly certified under 18 & 19 Vict. c. 81, or in any *chapel of any religious denomination*, he commits an offence; and this is the case, whether he so conducts himself during divine service or at any other time, and whether he be in the meeting-house itself or in a churchyard or burial-ground (23 & 24 Vict. c. 32, s. 2). So, too, he commits a like offence if he *molests*, troubles, or disquiets

Summary
process under
23 & 24 VICT.
c. 32.

Riotous or
indecent
behaviour.

Molesting
preacher or
clergyman.

any *preacher* duly authorized to preach in such a place, 23 & 24 Vict.,
or any *clergyman* celebrating any sacrament, service, rite, c. 32.
or office in any cathedral, church, or chapel, churchyard
or burial-ground (*ib.*).

The penal provisions of this section apply as well to persons in holy orders as to laymen, so that the perpetual curate of a parish was held to have been properly convicted of violent and indecent behaviour in the churchyard of his own church (*Vallancey v. Fletcher*) (*y*).

It seems that the defendant may be convicted although his violent behaviour was in assertion of a *bonâ fide*, though unfounded, claim of a right to choose his own seat (*Asher v. Calcraft*) (*z*).

It has been held that a churchwarden was not justified in forcibly excluding a parishioner (who, in this particular case, was a reformatory boy) from entering the church on the ground that, in the judgment of the former, the parishioner could not be conveniently accommodated with a seat (*Taylor v. Timpson*) (*a*): and see as to molestation of a clergyman whilst collecting the offertory, *Cope v. Barber* (*b*). The offender may be apprehended either by a constable or a churchwarden (*ib.* s. 3).

PENALTY.—FINE, not exceeding 5*l.*, and in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111); Penalty.

Or, IMPRISONMENT, *without* hard labour, for not more than TWO MONTHS.

Appeal lies to the quarter sessions (s. 4).

It is moreover, an *indictable* misdemeanour, either by threats or force, to obstruct a minister of any denomination in or from officiating in any church or place of worship, or at the burial of the dead, *or* to offer any violence to him or seek to arrest him on civil process whilst so engaged, or whilst going to or returning from such duty, &c. [*Imprisonment*, two years.] (24 & 25 Vict. c. 100, s. 36.) Obstructing ministers, misbehaviour at burials, &c.

Riotous behaviour at burials is also punishable as an

(*y*) [1897] 1 Q. B. 265; 66 L. J. Q. B. 297; 76 L. T. 201; 45 W. R. 367.

(*z*) (1887) 18 Q. B. D. 607; 56 L. J. M. C. 57; 56 L. T. 490; 51 J. P. 598.

(*a*) (1888) 20 Q. B. D. 671; 57 L. J. Q. B. 216; 52 J. P. 135.

(*b*) (1872) L. R. 7 C. P. 393; 41 L. J. M. C. 137; 26 L. T. 891; 20 W. R. 885.

indictable misdemeanour under the Burial Laws Amendment Act, 1880 (43 & 44 Vict. c. 41, s. 7).

Sacrilege.

It is, too, punishable on indictment with penal servitude for life, to break and enter a church, chapel, meeting-house, or other place of divine worship, and to commit any felony therein; *or*, being therein, to commit any felony and break out (24 & 25 Vict. c. 96, s. 50). This crime (so far as adults are concerned) is triable only at assizes.

As to the meaning of "breaking and entering," see HOUSEBREAKING (*post*, p. 543).

Clergy Discipline Act, 1892.

Certificates of convictions, orders and findings affecting clergymen should be sent by the court to the bishop of the diocese (55 & 56 Vict. c. 32, s. 5; H. O. Circular, May 23rd, 1907).

And see BURIALS, *ante*, p. 349.

CINEMATOGRAPH.

Grant of licences.

The Cinematograph Act, 1909, empowers the councils of counties and county boroughs to grant and transfer licences in respect of premises to be used for an *exhibition of pictures or other optical effects by means of a cinematograph or other similar apparatus, for the purposes of which inflammable films are employed* (9 Edw. 7, c. 30). The licences are to be granted on such terms and conditions and under such restrictions as, *subject to the regulations of the Secretary of State (bb)*, the council may determine (*ib.*, s. 2). A council may, with or without restrictions or conditions, *delegate to justices sitting in petty sessions* any of the powers conferred on them (*ib.* s. 5). As to premises licensed by the Lord Chamberlain, see s. 7 (*i.*).

P. 1215.

Offences.

It is an OFFENCE to give an exhibition without complying with the regulations *or* elsewhere than in licensed premises (subject to certain exemptions). If the *owner* of apparatus uses it or allows it to be used, or if the *occupier* of premises allows them to be used, in contravention of the Act or regulations or of the conditions of the licence, he becomes liable on summary conviction to a :

Penalty.

PENALTY, not exceeding 20*l.*, recoverable by *distress*, and, in default, imprisonment *without* hard labour, according to scale (p. 111); and, for a *continuing* offence, to a further

(*bb*) See *Regulations of December 20th, 1909 (S. R. & O., 1909, No. 1465)*; *post*, p. 1215.

penalty of 5*l.* a day (*ib.* ss. 1, 3). The licence (if any) is liable to be revoked by the council (s. 3).

The Act does not apply to exhibitions in a *private dwelling house* to which the *public* are not admitted, whether on payment or otherwise (s. 7 (iv.)).

Exemptions.

If premises are used "occasionally and exceptionally only," and not on more than *six days in a calendar year*, a licence is unnecessary if *not less than seven days' written notice* is given to the council and chief of the police; but the *occupier* must comply with the REGULATIONS, and with any CONDITIONS of the council notified to him in writing (s. 7 (ii.)).

If it is proposed to give the exhibition in a building or structure "of a moveable character," it is sufficient if a licence has been obtained where the *owner* "ordinarily resides." But not less than *two days' written notice* must be given to the council and chief officer of police where it is proposed to give the exhibition, and the *owner* must comply with the REGULATIONS, and with any CONDITIONS of the council notified to him in writing (s. 7 (iii.)).

Movable structure.

A constable or officer appointed for the purpose by the council may, at all reasonable times, enter premises, *whether licensed or not*, in which he has reason to believe that an exhibition is being, or is about to be, given. The PENALTY for preventing or obstructing such entry is a FINE not exceeding 20*l.*, recoverable as above (s. 4).

Power of entry.

COIN.

Any person finding in any place whatever, or in the custody of any person having the same without lawful excuse, any counterfeit coin, or coining tools or apparatus of any description, or any filings or clippings produced by the "sweating" process, is *required* at once to seize the same, and carry them forthwith before a justice. And, on oath that there is reasonable cause to suspect that any person has been engaged in a coining offence, or is in possession of any such counterfeit coins, coining tools, filings, &c., a justice may issue a search warrant (24 & 25 Vict. c. 99, s. 27).

Seizing counterfeit coins, or tools, for coining.

Search warrant.

Anyone may apprehend a person found committing an offence against the Coinage Act, and may deliver him to a peace officer to be brought before a justice (*ib.* s. 31).

Apprehension.

Venue.

Where counterfeit coins are tendered in different jurisdictions within ten days, or where two or more persons act in concert in different jurisdictions, offenders may be dealt with and the offence laid and charged to have been committed in any one of the jurisdictions (*ib. s. 28*).

Evidence.

The evidence of any credible witness will be sufficient to establish the falsity of a coin without the calling of any officer of the mint or other skilled person (*ib. s. 29*). The offence may be complete although the counterfeit coin be not perfected or in a fit state to be uttered (*ib. s. 30*).

Summary Jurisdiction.

Disputes as to bad coin.

- (a) Any person to whom a gold or silver coin is tendered, if he suspects it to be light or counterfeit, is at liberty to cut, bend, or break it. If he turn out to have been in the right, the person tendering the coin must bear the loss. If wrong, the bent or broken money must be accepted at its full rate. A coin, however, must not be objected to in this fashion as light, simply because it may be the worse for "reasonable wear." Should *any dispute* arise, it may be settled in a summary manner by any justice, who is empowered to examine upon oath as well the parties themselves as any other person able to throw light upon the matter (24 & 25 Vict. c. 99, s. 26).

There seems to be no power under this section to direct payment of a "sum of money"; nor any summary method of enforcing an *order* if made, the statute being *prior* to the Summary Jurisdiction Act, 1879; cf. *ante*, p. 120.

So, too, there is similar provision for the settlement of any dispute which may arise as to the breaking of any gold coin of the realm, supposed to be below the current weight, or of any coin called in by proclamation (33 Vict. c. 10, s. 7).

Tendering coin defaced by stamping names or words thereon.

- (b) Any person who *tenders* gold, silver, or copper coin, which has been *defaced by stamping thereon any names or words*, commits an offence, although the coin be not thereby diminished or lightened (24 & 25 Vict. c. 99, s. 17). But a prosecution cannot be commenced except by consent of the Attorney-General.

PENALTY.—FINE, not exceeding 2*l.*, and, in default of

distress, imprisonment, *without* hard labour, according to scale (p. 111).

(c) Anyone who is in unlawful possession of *more than five* pieces of counterfeit *foreign* coin commits an offence (24 & 25 Vict. c. 99, s. 23).

Possessing more than five counterfeit foreign coins.

PENALTY (before one or more justices).—FINE, not exceeding 2*l.* nor less than 10*s.* for every coin; and, in default of *payment*, imprisonment, with or without hard labour, according to scale (p. 111).

The coin should be ordered to be destroyed. Half the penalty goes to the informer and half to the poor. As to mitigation of penalty for first offence, see *ante*, p. 105; and as to the amount of penalty if before *one* justice, *ante*, p. 12.

Indictable Offences.

The following OFFENCES are, in the case of adults, punishable only on indictment.

In the case of a felony under the Act, principals in the second degree and accessories before the fact are punishable as principals in the first degree; while accessories after the fact are liable to two years' imprisonment (24 & 25 Vict. c. 99, s. 35).

Accessories.

As to offences committed within the jurisdiction of the Admiralty, see s. 36 (*ante*, p. 9).

As to how far evidence is admissible to show that the accused attempted *on other occasions* to pass off counterfeit money, &c., see *R. v. Forster* (c); *Makin v. Att.-Gen. for N.S. Wales* (d). Such evidence is admissible on the issue whether the acts charged were designed or accidental, or to rebut a defence otherwise open to the accused.

Evidence of previous utterings.

(d) *Falsely making or counterfeiting* any coin resembling, or apparently intended to resemble or pass for, any of the King's current *gold or silver* coin. [Felony; triable only at assizes; penal servitude for life.] (24 & 25 Vict. c. 99, s. 2.)

Counterfeiting gold or silver coin.

Where sovereigns had been fraudulently filed at the edges, and a new milling made on each coin, it was held that they were "counterfeit," on the ground that they

(c) (1855) 24 L. J. M. C. 134; Dears. 456.

(d) [1894] A. C. 57; 69 L. T. 778 58 J. P. 148.

were imperfect coins, milled so as to conceal their imperfections (*R. v. Hermann*) (e).

Gilding, &c.,
for coining
purposes.

(e) *Gilding or silvering* any metal for coining purposes; gilding or filing copper coin, to make it pass for gold or silver: or, gilding silver coin, to make it pass for gold. [Felony; triable only at assizes; penal servitude for life.] (*Ib.* s. 3.)

Lightening
gold or silver
coin.

(f) *Impairing or lightening* gold or silver coin with intent that the same may pass for current coin. [Felony; penal servitude for fourteen years.] (*Ib.* s. 4.)

It is, too, a felony to be in unlawful possession of filings or clippings, dust, &c., produced by impairing, &c. (*ib.* s. 5).

Traffic in
counterfeit
coin.

(g) *Buying, selling, receiving, or putting off* any counterfeit gold or silver coin for a lower rate or value than that imputed by its denomination without lawful excuse. [Felony; triable only at assizes; penal servitude for life.] (*Ib.* s. 6.)

Uttering
counterfeit
gold or silver
coin.

(h) *Knowingly tendering or uttering* (i.e., offering) any counterfeit coin resembling current gold or silver coin. [Misdemeanour; imprisonment for one year.] (*Ib.* s. 9.)

Uttering, &c.,
coupled with
possession of
other coin, or
followed by
second
uttering.

(i) *Knowingly tendering or uttering* any counterfeit coin resembling current gold or silver coin, and *having at the time in possession any other piece* of counterfeit coin; or, on the same day, or within the next ten days, knowingly tendering or uttering another counterfeit coin. [Misdemeanour; imprisonment for two years.] (*Ib.* s. 10.)

Having in
possession
three or more
counterfeit
coins.

(j) *Knowingly having in possession three or more pieces* of counterfeit gold or silver coin with intent to utter the same. [Misdemeanour; penal servitude for five years.] (*Ib.* s. 11.)

(k) *Committing any one of the offences* (h), (i) or (j) after a *previous conviction* for a similar offence, or for any offence under Acts relating to the coin. [Felony; triable only at assizes; penal servitude for life.] (*Ib.* s. 12.)

Uttering
foreign coin
or medals as
current coin.

(l) *Tendering as gold or silver coin with intent to defraud, any foreign coin or any medal or metal*

(e) (1879) 4 Q. B. D. 284; 48 L. J. M. C. 106; 40 L. T. 263.

resembling the current coin but being of less value.

[Misdemeanour; imprisonment for one year.] (*Ib.* s. 13.)

As to the making or selling of medals, &c., resembling any of the King's gold or silver coins, see 46 & 47 Vict. c. 45, s. 2.

(m) *Counterfeiting copper coin*, having any dealing with tools for counterfeiting copper coin, or buying, &c., counterfeit coin resembling copper coin for less value than it imports. [Felony; penal servitude for seven years.] (24 & 25 Vict. c. 99, s. 14.)

Counterfeiting copper coin.

(n) *Knowingly tendering counterfeit copper coin*; or knowingly having in possession three or more pieces with intent to utter the same. [Misdemeanour; imprisonment for one year.] (*Ib.* s. 15.)

Uttering counterfeit copper coin.

(o) *Defacing current gold, silver, or copper coin*, by *stamping thereon any names or words*, whether the coin is thereby lightened or not. [Misdemeanour; imprisonment for one year.] (*Ib.* s. 16.)

Defacing coins by stamping.

This offence is complete without any intent to utter; and as to *passing* such defaced coin, see offence (b).

(p) *Unlawfully making, mending, &c., or having in possession any coining tools or apparatus, e.g., a galvanic battery* (*R. v. Gover*) (*f*). [Felony; triable only at assizes; penal servitude for life.] (*Ib.* s. 24.)

Having tools, &c., in possession.

As to *importing* or *exporting* counterfeit coin, see ss. 7, 8; and as to counterfeiting, &c., *foreign coin*, see ss. 18, 19, 20, 21, 22.

COMMON LODGING-HOUSES

are houses in which poor people are received for lodging. By the Lodging Houses Act (Ireland), 1860 (23 Vict. c. 26, s. 3), it was declared that the term "common lodging-house" in the various statutes meant "a house in which persons are harboured or lodged for hire for a single night or for less than a week at a time, or any part of which is let for any term less than a week." This Act is now repealed, but it has been held that the definition is applicable to the statutes still in

Meaning of "common lodging-house."

“Common
lodging-
houses,”
—*contd.*

force (*Parker v. Talbot*) (*h*). In such houses it generally happens that the lodger uses one or more rooms in common with the rest of the inmates, as, *e.g.*, where a house is frequented by hawkers and others who feed in one common room and sleep in separate rooms (*Langdon v. Broadbent*) (*g*). Houses carried on as *charitable institutions* to which destitute persons of the poorest class are admitted, and in which they are treated or dealt with in a manner similar to the frequenters of common lodging-houses, are not within the Acts *if no payment of any kind is made by or on behalf of the persons so admitted* (*Parker v. Talbot*) (*h*). In a place where some charge is made, the sleeping of members not of the same family in cubicles or beds in a common room, and the fact that meals are had in a common room, do not constitute the place a common lodging-house unless such reception and accommodation can be deemed *the substantial and main purpose of the charity*; thus, hospitals and convalescent homes would not be within the Acts. But, a charitable institution *does not cease* to be a common lodging-house by reason only that *the charity has other purposes*, either benevolent or religious, which, taken by themselves, are outside the objects of the Acts, as in the case of the shelters of the Salvation Army (*S.C.*, per *Cozens-Hardy*, *L.J.*). The Acts referred to are 14 & 15 Vict. c. 28; 16 & 17 Vict. c. 41. As to the *registration*, &c., of such places, see the Public Health Acts (*post*, p. 830); and as to notification, &c., of infectious diseases, see 52 & 53 Vict. c. 72 (*post*, p. 576, and p. 844). As to harbouring thieves, see 34 & 35 Vict. c. 112, s. 10 (*post*, p. 632).

CONCEALMENT OF BIRTH.

Concealment
of birth.

If any woman is delivered of a child, *every person* who, by any *secret disposition of the dead body* of the child, endeavours to *conceal the birth* thereof commits an indictable misdemeanour, whether such child died before, at, or after its birth. [Imprisonment for two years.] (24 & 25 Vict. c. 100, s. 60.)

(*h*) [1905] 2 Ch. 643; 75 L. J. Ch. 8; 93 L. T. 522; 54 W. R. 132; 70 J. P. 43.

(*g*) (1877) 37 L. T. 434; 42 J. P. 56.

This charge, in case of an adult, is triable only at assizes.

Concealment
of birth
—*contd.*

The offence will be complete if, with intent to conceal the birth, the body is placed where it is very unlikely to be discovered, although it may not be actually concealed from view (*R. v. Brown*) (*i*). But it is not an offence to conceal the delivery of a mere foetus, which has not reached the stage at which it might have been born alive. It will be observed that the offence relates to a secret disposition of the *dead* body; and any person acquitted upon a charge of *murdering* a newly-born child, may, upon sufficient evidence, be then and there found guilty and punished as if the indictment had been for *concealing its birth*. It should be observed that the mistress of a maid-servant is not such a “person in authority” as to exclude an involuntary confession of concealment made to her by the maid (see *ante*, p. 147).

CONSPIRACY.

Although an act may be simply wrongful or immoral if committed by a single individual, it may, nevertheless, be a criminal offence for two or more persons to *agree together to commit* such an act. Thus, it was held to be an indictable misdemeanour for two persons to conspire together to effect the seduction of a young woman (*R. v. Delavel*) (*k*); to “bull” or “bear” consols by spreading false news (*R. v. Beringer*) (*l*); to secure, by false pretences and with the intention of defrauding the public, a quotation for shares in the list of the Stock Exchange (*R. v. Aspinall*) (*m*); see, too, *R. v. Whitchurch and others* (*n*). It was held that a combination by shipping firms to secure the monopoly of certain freights is not an unlawful conspiracy if carried into effect without intimidation or fraud (*Mogul Steamship Co. v. McGregor*) (*o*). But it is, nevertheless, well established

Conspiracy at
common law.

(*i*) (1870) L. R. 1 C. C. R. 244; 39 L. J. M. C. 94; 22 L. T. 484; 18 W. R. 792.

(*k*) (1763) 3 Burr. 1434.

(*l*) (1833) 3 M. & S. 67.

(*m*) (1877) 2 Q. B. D. 48; 46 L. J. M. C. 145; 25 W. R. 283; 36 L. T. 297.

(*n*) Cited *ante*, p. 209.

(*o*) [1892] A. C. 25; 61 L. J. Q. B. 295; 66 L. T. 1; 40 W. R. 338; 56 J. P. 101.

Conspiracy at common law.

that, *at the common law*, it is an indictable offence to conspire to injure a man *in his civil rights* by wrongful as distinguished from *criminal* means (*R. v. Rowlands* (p); and see *Quinn v. Leathem* (q)). As to the *statutory* provisions in respect of *trade disputes*, see *post*, p. 397. It is, of course, a criminal conspiracy to *agree to commit* an indictable offence, although the offence may not in fact be committed; to conspire to accuse anyone falsely of a crime; or, to conspire to obstruct or defeat the course of justice or the execution of any legal process. So, also, a combination of two or more persons to obtain by false representations a passport, in the name of one man with intent that it should be used by another, is indictable as an act tending to create public mischief (*R. v. Brailsford*) (r). And see *R. v. Duguid*, cited *ante*, p. 368.

And see *R. v. Porter*, *ante*, p. 168.

Procedure.

Such conspiracies are punishable by fine or imprisonment, and an adult may be tried only *at assizes*, except where the object of the conspiracy is to commit an offence which the quarter sessions would have jurisdiction to try if it were committed by one person.

When two persons are indicted and tried together for conspiracy (unless it is alleged in the indictment that the two conspired not only together, but also with some third person) both must be convicted or both acquitted (*R. v. Manning* (s); and see *R. v. Plummer* (t)).

Husband and wife cannot be indicted for conspiracy, unless they conspired also with some third person.

Conspiracy to murder.

It is a statutory misdemeanour, punishable on indictment with penal servitude for ten years, to conspire with, or to persuade, a man to murder any person, whether he be within or without the King's dominions (24 & 25 Vict. c. 100, s. 4). This offence is triable only at assizes. See further, *post*, p. 743.

Venue.

The venue may be laid in any county or place in which an act was done by any one of the conspirators in furtherance of the common purpose.

(p) (1852) 17 Q. B. 671; 2 Den. 364; 21 L. J. M. C. 81.

(q) [1901] A. C. 495; 70 L. J. P. C. 76; 65 J. P. 708; 85 L. T. 289.

(r) [1905] 2 K. B. 730; 75 L. J. K. B. 64; 93 L. T. 401; 69 J. P. 370; 21 T. L. R. 727.

(s) (1884) 12 Q. B. D. 241; 53 L. J. M. C. 85; 51 L. T. 121; 32 W. R. 720; 48 J. P. 536.

(t) [1902] 2 K. B. 339; 71 L. J. K. B. 805; 86 L. T. 836; 66 J. P. 647.

Statements made by one of the conspirators, although, Evidence.
of course, evidence against himself if made voluntarily, are evidence against his co-conspirators only in case it appears that they were made *in furtherance of the common purpose* and not otherwise; and, before any such statement can be admissible at all, except as against the person who made it, there must be *prima facie* evidence of the existence of the conspiracy.

An agreement or combination by two or more persons to do, or procure to be done, any act, in contemplation or furtherance of a *trade dispute*, is not indictable as a conspiracy, if such act committed by one person would not be *punishable as a crime*. "Crime" here means an indictable offence, or one punishable on summary conviction, for the commission of which the offender is liable to be *imprisoned*, either *absolutely* or at the discretion of the court, as an *alternative* to some other punishment.

"Trade dispute" means any dispute *between employers and workmen*, or *between workmen and workmen*, which is connected with the employment or non-employment, or the terms of the employment, or with the conditions of labour of *any person* (tt).

"Workmen" means all persons employed in *trade or industry*, whether or not in the employment of the employer with whom a trade dispute arises.

The Act of 1875 does not apply where the *defendant* is a seaman or an apprentice to the sea service (38 & 39 Vict. c. 86, s. 16) (*Kennedy v. Cowie*) (u). But as to who is a "seaman" within this proviso, see *R. v. Lynch* (v).

There seems to be nothing illegal in a "strike"; but, "Strikes."
while, in the constitution of a society, provisions for the assistance of the victims of a strike may be perfectly legal, provisions to encourage or procure a strike may be illegal. So far, however, as any *prosecution for conspiracy* is concerned, the Conspiracy and Protection of Property Act, 1875, "renders agreements to strike simpliciter lawful, because it removes the only ground on which they could be held unlawful" (per *Fletcher Moulton, L.J.*, in *Gozney v. Bristol Trade, &c., Society*, cited, *post*, p. 485).

(tt) Cf. *Conway v. Wade* [1909] A. C. 506; 78 L. J. K. B. 1025; 53 S. J. 754; 101 L. T. 248; 25 T. L. R. 779.

(u) [1891] 1 Q. B. 771; 60 L. J. M. C. 170; 64 L. T. 593; 39 W. R. 686; 55 J. P. 680.

(v) *Post*, p. 955.

Exemptions under the Conspiracy and Protection of Property Act, 1875; and the Trades Disputes Act, 1906.

38 & 39 Vict. c. 86; 6 Edw. 7 c. 47.

The statutory provisions as to trade disputes do not, however, exempt from punishment a person guilty of any conspiracy *rendered punishable by Act of Parliament*; and it is, in particular, provided that every person commits an offence:

Breach of contract of service by persons engaged in gas or water supply.

(a) If, being employed by a municipal authority, or by a company or contractor whose duty it is to supply any city or place with *gas or water*, he wilfully and maliciously *breaks the contract of service*, knowing or having reasonable cause to believe that the probable consequences of his so doing, *either alone or in combination with others*, will be to deprive the inhabitants of that city or place wholly or to a great extent of their supply of gas or water;

Breach of contract of service involving serious injury, or endangering life, &c.

or, (b) If he wilfully and maliciously *breaks a contract of service* or hiring, knowing or having reasonable cause to believe that the probable consequences of his so doing, *either alone or in combination with others*, will be to *endanger human life*, or cause serious bodily injury, or to expose valuable property to destruction or serious injury (38 & 39 Vict. c. 86, ss. 4, 5). The word "maliciously" is to be here construed in the manner required by s. 58 of 24 & 25 Vict. 97 (*post*, p. 689; *ib.* s. 15).

The accused may, on appearing before the court, OBJECT to being tried by a court of summary jurisdiction, and, thereupon, the case will be proceeded with as though he were charged with an INDICTABLE offence (s. 9).

Appeal lies to quarter sessions (ss. 11, 12).

Penalty.

PENALTY.—FINE, not exceeding 20*l.*, and, in default of distress, imprisonment, *without* hard labour, according to scale (p. 111).

Or, IMPRISONMENT, with or without hard labour, for not more than THREE MONTHS.

For a *second* offence the fine must not be less than 5*l.* (s. 8).

And see title WORKMEN, *post*, p. 953.

CONSTABLES.

County constables, retaining accoutrements.

On determination of their service *county* constables, who improperly refuse to deliver up their accoutrements, &c., become liable to a month's imprisonment with hard

labour under the County Police Act, 1839 (2 & 3 Vict. c. 93, s. 14); while it is under the same Act an offence to possess any part of the dress, accoutrements, &c., of a county constable without being able to account satisfactorily for such possession, or to put on the dress, or to take the name, &c., of such a constable to obtain admission to a house or place, or for any unlawful purpose (s. 15).

County Constables; possessing accoutrements or taking name of.

PENALTY.—FINE, not exceeding 10*l.*, and, in default of distress, imprisonment, *without* hard labour, according to scale (p. 111).

Constables appointed under the County Police Act of 1839 are liable, in respect of any neglect or violation of duty in their office to a

County constables, neglect of duty by.

PENALTY.—FINE, not exceeding 10*l.*, and, in default of distress, imprisonment, *without* hard labour, according to scale (p. 111)—or the fine may be deducted from salary—or, IMPRISONMENT, with or without hard labour, for *one month*.

2 & 3 Vict. c. 93, s. 12.

A borough constable, guilty of neglect of duty or of disobedience to a lawful order, is liable to a

Borough constables, neglect of duty by.

PENALTY.—FINE, not exceeding 2*l.*, and, in default of distress, imprisonment, *without* hard labour, according to scale (p. 111), or IMPRISONMENT, *without* hard labour, for TEN DAYS. Or the constable may be dismissed from office.

45 & 46 Vict. c. 50, s. 194.

As to *assaults* on and *resisting* constables, see *ante*, pp. 285, 286; and as to *refusal to assist* a constable, see *ante*, p. 51; as to *special constables*, see *post*, p. 892.

CONVICTS.

Provision is made for the issue by a “court of summary jurisdiction,” of a warrant for the apprehension of a person on licence under the Prevention of Crime Act, 1908, after information on oath that the licence has been forfeited. On apprehension, such person must, if the allegation prove well-founded, be remitted to “preventive detention” (8 Edw. 7, c. 59, s. 15 (iv)).

Prevention of Crime Act, 1908.

Every convict who is the holder of a licence, known as a *ticket-of-leave*, and every person who is placed under *police supervision*, must notify his residence, and every change of residence, to the chief officer of police of the district. If he is about to leave a police district he must

Ticket-of-leave man or person under *police supervision* omitting to

notify change of residence or to report himself.

give notification of his intention in the district which he proposes to leave, stating where he is going; and, on arrival in the district to which he repairs, he must forthwith notify the chief officer of police. The licence-holder or supervisee, if a male, must also report himself monthly as the police may require. If he *omits to give the required notification, or to report himself* in accordance with the regulations, to the person in charge of the police station of the district, he commits an offence (34 & 35 Vict. c. 112, ss. 5, 8; 54 & 55 Vict. c. 69, s. 4).

The accused must, AT THE OUTSET, be given the OPTION OF TRIAL BY JURY (*ante*, p. 63).

An offender may be taken into custody by a constable without warrant.

The police records are *primâ facie* evidence against the defendant; but, if he asserts that he reported himself to a particular person, the court must compel the attendance of such person in order to prove or disprove the assertion (42 & 43 Vict. c. 55, s. 2). It would be a sufficient answer to the charge if the defendant satisfied the court that he had done his best to fulfil the requirements of the statute.

Penalty.

PENALTY.—IMPRISONMENT, with or without hard labour, for not more than ONE YEAR; or (if the accused is a licence-holder) *forfeiture of the licence*, on which the prisoner will become liable to serve the remainder of the sentence unexpired at the date of the conviction. In case of forfeiture of the licence, the offender may be committed to any prison in the jurisdiction and there kept to hard labour until he can be received in a convict prison (34 & 35 Vict. c. 112, s. 17 (iv.)).

On the conviction of a licence-holder, the court must without delay forward by post a certificate in the prescribed form to the Secretary of State (27 & 28 Vict. c. 47, s. 8).

Offences by a person who has been convicted on indictment after previous conviction of "crime."

Every person who has been *convicted on indictment of any "crime" i.e., any felony, or uttering or possessing counterfeit coin, obtaining money or goods by false pretences, conspiracy to defraud, or any of the misdemeanours under s. 58 of the Larceny Act, 1861 (set forth on p. 544), and against whom a previous conviction of such a crime is proved, will, at any time within seven years after the expiration of the sentence for the last of*

such crimes, *or* at any time whilst he is at large under such sentence as the holder of a licence known as a *ticket-of-leave*, be deemed to be guilty of an offence :

Offences by persons convicted on indictment after previous conviction.

- (a) If the court is satisfied that he is *getting his livelihood by dishonest means*.

If the offender is on licence he may possibly be taken into custody by any constable without warrant, and in any case he may be taken into custody without warrant by a constable who is authorized by the chief officer of police of the district. But it is not necessary that the offender should be brought before the court in this manner. It would be sufficient if he were brought by the constable before the court on some other charge.

- (b) If, on being charged with any offence, he *refuses to* inform a court of summary jurisdiction of *his name and address*, or gives a false name or address.

- (c) If he is found in any place under such circumstances as to satisfy the court that he was *about to commit*, or aid in the commission of, some *offence*, or was waiting an opportunity so to do.

The culprit may be taken into custody without warrant by any constable.

- (d) If he is found in any dwelling-house or premises attached thereto, or in any shop, warehouse or place of business, or in any garden, orchard, pleasure-ground, or nursery ground *without being able to account satisfactorily* to the court for his being found there. The offender may be taken into custody without warrant by any constable, or by the owner or occupier of the property, or by the servant of, or any other person authorized by, such owner or occupier (34 & 35 Vict. c. 112, ss. 3, 7 ; 54 & 55 Vict. c. 69, ss. 2, 4, 6).

The accused must, in respect of any of the offences (a), (b), (c), or (d), AT THE OUTSET be given the OPTION OF TRIAL BY JURY (*ante*, p. 63).

As to the proof of previous convictions, see 34 & 35 Vict. c. 112, s. 18, and *ante*, p. 106.

PENALTY.—*Imprisonment*, with or without hard labour, for not more than ONE YEAR. Penalty.

Moreover, if the accused be a *licence-holder* and the court be satisfied that he is *getting his livelihood by dishonest means* (OFFENCE (a)), he would incur *forfeiture* Licence-holder obtaining livelihood dishonestly.

of his licence, although *no previous conviction* had been proved against him (34 & 35 Vict. c. 112, s. 3).

Breach of
conditions of
ticket-of-
leave.

If a ticket-of-leave man fails, without reasonable excuse, to *produce his licence* when required by the judge or magistrate, or by a constable in whose custody he may be, or if he breaks any other of the *conditions of a licence granted in the ordinary form*, he may be convicted summarily (27 & 28 Vict. c. 47, s. 5).

So, too, if conditions *other than those contained in Schedule A* of the Penal Servitude Act, 1864 (*i.e.*, to preserve and produce the licence, abstain from violations of the law, not associate with bad characters, and not lead an idle and dissolute life) are contained in the licence of a ticket-of-leave man, and he breaks any of such conditions by an act which is not in itself otherwise punishable, he may be convicted summarily, and incurs a like penalty (34 & 35 Vict. c. 112, s. 4).

PENALTY.—*Imprisonment*, with or without hard labour, for not more than THREE MONTHS.

Registration,
photography,
&c.

There are also provisions as to the keeping of a register of criminals and the photographing, measurement, &c., of persons convicted of or charged with crimes; and appropriate penalties are provided for any breach of the regulations (34 & 35 Vict. c. 112, s. 6; 54 & 55 Vict. c. 69, s. 8; Prison Rules, 1899). In case an *untried prisoner objects*, a police application for photographing, &c., requires confirmation by (*inter alios*) a justice of the peace.

Power of
police to
search with-
out justice's
warrant.

In case premises (α) are, or within the preceding twelve months have been, occupied by a person who has been *convicted of receiving stolen property or of harbouring thieves*, or (β), are occupied by a person who has been *convicted of an offence involving fraud or dishonesty* punishable by imprisonment or penal servitude, any constable may be authorized in writing by a *chief officer of police*, without the intervention of a magistrate, to *search the premises and seize property* believed to have been stolen, as though he were armed with a search warrant.

Power of
justices to
deal with
property
seized.

If any property is seized, the person on whose premises it was at the time of seizure, or the person from whom it was taken, if other than the person on whose premises it was, may (unless previously charged with receiving the same knowing it to have been stolen) be summoned before a court of summary jurisdiction to

account for his possession of such property, and the court may make such *order as to the disposal of the property, and may award such costs*, as the justice of the case may require (34 & 35 Vict. c. 112, s. 16).

COPYRIGHT.

Where a copyright book (including in that term any pamphlet, map, sheet of music, chart, or plan separately published) has been first written or printed and published in the United Kingdom and is then *reprinted out of the British dominions*, anyone commits an OFFENCE who, *without the authority of the proprietor of the copyright*, imports or brings it (or causes it to be imported or brought) into any part of such dominions *for sale or hire*, or knowingly *sells*, publishes, or has in his possession for sale or hire such book (5 & 6 Vict., c. 45, ss. 2, 17).

Importing, &c., books reprinted without the British dominions.
5 & 6 Vict. c. 45.

The "book" may be seized by officers of customs, and the offence must be prosecuted where the book is found. Penalties are appropriated (as to 5*l.*) to the officer seizing and the residue to the proprietor of copyright (*ib.* s. 17).

PENALTY.—FINE of 10*l.*, together with double the value of every copy imported or published, &c.; and, in default of *distress*, imprisonment *without* hard labour, according to scale (p. 111).

Penalty.

Every one commits an OFFENCE who *copies, colourably imitates*, or otherwise multiplies for sale, hire, exhibition or distribution a *painting, drawing, or photograph*, or the design thereof, without the consent of the proprietor of the subsisting copyright. And a like OFFENCE is committed by anyone who *knowingly* imports, sells, publishes, lets to hire, exhibits or distributes (or offers for sale, hire, &c.), any such copy or imitation (25 & 26 Vict., c. 68, s. 6). The sale of each copy is a separate offence although there may be only one sale (*Ex parte Beal*) (*v*²).

Copying or imitating works of art.
25 & 26 Vict. c. 68.

As to who is the "author" of a photograph, &c., see *Nottage v. Jackson* (*v*³).

PENALTY.—Fine not exceeding 10*l.* recoverable as above, and forfeiture of the copies, &c. to the proprietor.

Penalty.

The offence must be prosecuted where the party offend-

(*v*²) (1868) L. R. 3 Q. B. 387; 37 L. J. Q. B. 161; 16 W. R. 852.
(*v*³) (1883) 11 Q. B. D. 627; 52 L. J. Q. B. 760; 32 W. R. 106.

ing resides: and penalties are appropriated to the proprietors of the copyright (*ib.* ss. 6, 8).

Frauds as to the signature of works of art, or the uttering of spurious works.

It is an OFFENCE fraudulently to affix a *name, initials, or monogram* to a *painting, drawing, photograph* or a *negative* thereof, or fraudulently to *sell, exhibit, offer, &c.*, such a work of art bearing the name, initials, or monogram of a person who did not execute it. So it is a like OFFENCE to dispose of a *spurious imitation* (whether there be a subsisting copyright or not), or to *alter* a work which has passed out of the possession of the maker, and, without his consent, selling or offering it as or for his unaltered work (*ib.* s. 7). This section is, however, confined to cases where the person whose name, &c., was fraudulently signed, or to whom the spurious or altered work was falsely ascribed, lived within twenty years. The offence must be prosecuted where the party offending resides, and penalties are appropriated to the person wronged.

Penalty.

PENALTY.—FINE not exceeding 10*l.* (or double the price at which the copies, &c., have been sold or offered) recoverable as above. The copies, &c., are forfeited to the person wronged.

Making false entry in book of registry.

It is an *indictable* misdemeanour to make a false entry in the Registry Book of the Stationers' Company or wilfully to tender in evidence a false copy of such an entry (5 & 6 Vict., c. 45, s. 12). AS TO MUSICAL COPYRIGHT, see *post*, p. 745; and see also PATENTS AND DESIGNS ACT, 1907, *post*, p. 751.

COUNTY COURT.

Assault on officer.

An *assault* on an officer or bailiff of the county court when acting in the execution of his duty is punishable by a FINE of 5*l.* (see *ante*, p. lix. and p. 287). As to ouster of jurisdiction, see *ante*, p. 277. There is a like penalty provided in case any *rescue* is made or attempted to be made of any goods levied under process of the court (*ante*, p. lxiv.).

Rescue.

Forgery of process.

It is an *indictable* felony to *forge the seal or process* of the court, or knowingly to serve or enforce a forged process or paper falsely purporting to be a copy of any process, or to act under false colour of process (51 & 52 Vict. c. 43, s. 180).

CUSTOMS.

See the Consolidation Acts (39 & 40 Vict. c. 36, ss. 229, 230; 40 Vict. c. 13; 41 & 42 Vict. c. 15; 42 & 43 Vict. c. 21, s. 26; 44 Vict. c. 12; 50 & 51 Vict. c. 7; and 53 & 54 Vict. c. 56). In the absence of express statutory provision, the Crown neither pays nor receives costs; but the Summary Jurisdiction Acts now apply to proceedings before justices relating to the customs; and where the sum adjudged to be paid exceeds 50*l.*, the imprisonment, in default of distress, “may exceed three months, but shall not exceed six months” (42 & 43 Vict. c. 49, s. 53). Costs in revenue cases.

The section last cited gives power to a court of summary jurisdiction to make an order for the payment of costs in a proceeding under *any statute* relating to the revenue, under the control of the Commissioners of Inland Revenue or Customs, to which the Crown, or some one on behalf of the Crown, is a party (*Thomas v. Pritchard*) (x). P. 1054. The prosecution must be commenced *within three years* after the commission of the offence (39 & 40 Vict. c. 36, s. 257).

DESERTERS.

Upon reasonable suspicion that a man is a deserter from the regular army, or is a reservist (xx) who, without reasonable excuse, has failed to appear at the time and place appointed for training or for assembling on embodiment, any constable (or, if no constable can immediately be met with, any officer, soldier, or other person) may apprehend such deserter or absentee and bring him forthwith before a court of summary jurisdiction. So, too, if a man of the “territorial force” fails to attend on embodiment. The court will then deal with the case as if the accused were charged with an *indictable* offence: and, if satisfied by evidence on oath, or by the confession of the suspected person, that he is a deserter or absentee without leave, will “cause him either to be

Apprehension of deserters and men absent without leave.

(x) [1903] 1 K. B. 209; 72 L. J. K. B. 23; 51 W. R. 58; 67 J. P. 71; 19 T. L. R. 10.

(xx) The battalions of “militia” no longer exist; and the men, for the most part, have elected to join the special reserve.

Committal to
await an
escort.

delivered into military custody in such manner as the court may deem expedient, or, *until he can be so delivered, to be committed to some prison, police station, or other place legally provided for the confinement of persons in custody, for such reasonable time as appears to the court reasonably necessary for so delivering him.*" The court must then send a "descriptive return" in relation to the deserter to the Secretary of State, who will direct payment of a fee of 2s. therefor. A scheme "to facilitate the delivery of military deserters into military custody without previous committal to prison" is propounded in a Home Office letter of October 16th, 1902 (see *Home Office Circulars of November 1st, 1907*, p. 30; and see generally as to the procedure, letter from Home Office of October 12th, 1907, p. 73).

Where a man confesses himself a deserter, but evidence of the truth or falsehood of such confession is not forthcoming, he should be remanded, and a "descriptive return" transmitted to the Secretary of State, or as he may direct. Remands of not exceeding eight days each may be made from time to time for the purpose of obtaining information ("Army Act," s. 154; 45 & 46 Vict. c. 48, s. 16). The Act of 1881, with subsequent amendments incorporated therein, is renewed annually as the "Army Act."

Rewards to
person effect-
ing appre-
hension.

A reward of from 5s. to 20s. to the person apprehending a deserter (whether or not such person be a police constable), as well as all expenses incurred (not exceeding a total of 40s.), will be paid by the War Office on the certificate of the committing justice. A scale of rewards for the assistance of magistrates is suggested in a letter of December 7th, 1891 (*Home Office Circulars of November 1st, 1907*, p. 11; and see pp. 30, 78). If a soldier is apprehended in uniform near his quarters, 5s. is suggested, and not more than 10s. will be allowed in any case where the soldier was in uniform. If apprehended in plain clothes at a distance from his unit, and after having been absent some time, 10s. to 15s. is suggested. The reward of 20s. should be "strictly reserved" for cases where "superior intelligence" has been displayed. "No reward should be recommended if the deserter has surrendered himself."

As to the arrest of a deserter *upon warrant*, see the Army Act, s. 154 (ii.), which provides for the issue of a

warrant authorizing apprehension when a justice is "satisfied by evidence on oath that a deserter is reasonably suspected to be within his jurisdiction."

If, however, it is a *reservist* who is charged as a deserter or as being absent without leave, he may not merely be delivered into military custody and tried by court-martial, but he may alternatively be tried by a *court of summary jurisdiction*, if the sanction of his commanding officer or of an authority superior to such officer has been signified to the court in writing (45 & 46 Vict. c. 48, ss. 15, 26 (i.)).

Proceedings before justices when a *reservist* deserts or is absent without leave.

The charge may be tried by the court having jurisdiction in the place where the offence was committed, or in the place where the offender may, for the time being, be (*ib. s. 25*). Proceedings may be instituted at any time within two months of the offence becoming known to the commanding officer if the offender is then in custody; otherwise, within two months of the date of his apprehension (*ib. s. 26 (ii.)*).

PENALTY.—FINE, not exceeding 25*l.* nor less than 2*l.*, and, in default of *payment*, imprisonment, with or without hard labour, for a term of *not less than seven days*, and not greater than that prescribed by the scale (p. 111). Penalty

There is no power to mitigate this penalty; but if the case is being dealt with in an *occasional courthouse* (*ante*, p. 12), so that the power of fining is limited to 20*s.*, either party may require an adjournment to the next practicable petty sessional court (Army Act, s. 166 (iv.)).

Any person who *falsely represents himself* to any military, naval, or civil authority as a *deserter or absentee without leave* from the regular forces or Army Reserve, commits an offence (Army Act, s. 152; 45 & 46 Vict. c. 48, s. 16 (ii.)). The trial may take place before any court of summary jurisdiction having jurisdiction in the place where the offence was committed, or in the place where the offender may, for the time being, be.

Pretending to be a deserter or absentee without leave.

PENALTY.—IMPRISONMENT, with or without hard labour, for not more than THREE MONTHS. There is no power to substitute a *fine* for imprisonment (*ante*, p. 106). Penalty.

Every person commits an offence who, by any means whatsoever, (a) *procures or persuades*, or attempts to procure or persuade, a soldier, reservist, or man of the "territorial force," to desert; or (b) *aids or assists him to desert*; or (c) *conceals, or assists in the concealment or*

Procuring soldier, man of "territorial force," or reservist to desert: or assisting,

concealing,
rescuing, or
employing a
deserter.

rescue of, a deserter, whether a soldier, reservist, or man of the "territorial force." So, too, everyone commits a similar OFFENCE who *employs, or continues to employ*, a man whom he knows to be a reservist, or man of the "territorial force," who has deserted (Army Act, s. 153; 45 & 46 Vict. c. 48, s. 17 (ii.); 7 Edw. 7, c. 9, s. 20).

"Desertion," in the case of a man not in the "regular" forces, means a failure, without lawful excuse, to appear at the time and place appointed for assembling on "embodiment"—*i.e.*, when placed on a war footing in case of imminent national danger or of great emergency.

The accused must, AT THE OUTSET, be afforded an OPTION OF TRIAL BY JURY (*ante*, p. 63).

The trial may take place before a court of summary jurisdiction having jurisdiction in the place where the offence was committed, or in the place where the offender may, for the time being, be.

Penalty.

PENALTY.—IMPRISONMENT, with or without hard labour, for not more than SIX MONTHS. There is no power to substitute a *fine* for imprisonment (*ante*, p. 106).

Procuring a
reservist
to absent
himself, &c.

Everyone commits an offence who, by any means whatsoever, (a) *procures or persuades*, or attempts to procure or persuade, a reservist to *absent-himself* without leave; or (b) *aids or assists* a reservist to absent himself without leave; or (c) *conceals or assists in the rescue of*, or *employs* a man whom he knows to be a reservist absent without leave (45 & 46 Vict. c. 48, s. 17 (i.)).

The trial may take place before a court of summary jurisdiction having jurisdiction in the place where the offence was committed, or in the place where the offender may, for the time being, be.

Penalty.

PENALTY.—FINE, not exceeding 20*l.*, and, in default of distress, imprisonment, *without* hard labour, according to scale (p. 111).

Evidence.

As to *evidence*, see Army Act, s. 163; 45 & 46 Vict. c. 48, s. 27 (ii.); and 7 Edw. 7, c. 9, s. 26. Enlistment in the service may be proved by the production of a copy of the attestation paper, purporting to be a certified copy, without proof of the handwriting of the officer having the custody of such paper, or of his having such custody; while a "descriptive return" within the meaning of the Army Act, purporting to be signed by a justice

of the peace, is evidence of the matters therein stated. And see further, *post*, p. 725.

The *furlough* of a soldier detained by sickness or other casualty may be *extended* by a justice for a time not exceeding *one month*, provided that there is not any officer of the rank of captain, or of higher rank, in the performance of military duty within a convenient distance. Such justice must, however, send immediately written notice of such extension and the cause thereof to the commanding officer, or, if he is not known, to the Secretary of State for War (Army Act, s. 173).

Justice's
power to
extend
furlough.

Failure to attend on *embodiment* of the Territorial Force is dealt with by s. 20 (i.) of the Territorial and Reserve Forces Act, 1907 (7 Edw. 7, c. 9). The offender is guilty, according to the circumstances, of deserting within the meaning of s. 12 or of absenting himself without leave within the meaning of s. 15 of the Army Act, and, whether otherwise subject to military law or not, is liable to be tried by court-martial.

Failure to
attend em-
bodiment of
Territorial
Force.

As to the penalty on "territorials" for failure to fulfil *training* conditions, see title MILITARY (*post*, p. 724).

DETAINING PROPERTY.

For the mere wrongful detention of property there is no general provision giving to the owner a summary remedy. But, *within the Metropolitan Police District*, upon complaint of any person claiming to be entitled to the property in or possession of goods, not exceeding 15*l.* in value, detained by another person, magistrates may order delivery up of the goods, with due regard to any charge or lien which may exist (2 & 3 Vict. c. 71, s. 40). "Goods" in this statute includes "dogs" (*R. v. Slade*) (*y*). The detention of the goods and effects of *seamen* by the keepers of lodging-houses and others is dealt with by the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60, s. 216), and a 10*l.* penalty imposed.

Detention of
property.

As to the detention of a female's wearing apparel in a brothel, &c., see *ante*, p. 348.

(*y*) (1888) 21 Q. B. D. 433; 57 L. J. M. C. 120; 52 J. P. 599.

DISORDERLY CONDUCT.

Disorderly
conduct.

Within the Metropolitan Police District, any constable may apprehend without warrant "all loose, idle, and disorderly persons, whom he shall find disturbing the public peace," or (between sunset and 8 A.M.) loitering, and not giving a satisfactory account of themselves (10 Geo. 4, c. 44, s. 7, and 2 & 3 Vict. c. 47, s. 64). There is no analogous provision in the Town Police Clauses Act (*post*, p. 771), authorizing apprehension where no specific offence is being committed; but, in *boroughs*, any constable on duty may apprehend idle and disorderly persons disturbing the public peace (Municipal Corporations Act, 1882, s. 193; and see *ante*, p. 48). As to ringing door bells or knocking at doors in districts to which the Town Police Clauses Act applies, see *post*, p. 773.

Public
Meeting Act,
1908.

Any person who at a *lawful public meeting* acts in a *disorderly manner* for the purpose of *preventing the transaction of the business* for which the meeting was called together is liable to a PENALTY of 5*l.* (recoverable by distress and imprisonment), or to IMPRISONMENT for one month, *without* hard labour. One who *incites* others is made guilty of a like offence (cf. *ante*, p. 150). During a parliamentary contest, after the issue of the writ, the offender would be guilty of an "illegal practice"; cf. *post*, p. 670 (8 Edw. 7, c. 66).

DOGS.

Stealing dogs.

A dog was not the subject of larceny at the common law; but, now, everyone who *steals a dog* commits an offence for which he is punishable, if it be a *first offence*, by a court of summary jurisdiction, and, if a *second or subsequent offence*, on conviction after trial on indictment (24 & 25 Vict. c. 96, s. 18).

Even in the case of a first offence, the accused must, AT THE OUTSET, be afforded the OPTION OF TRIAL BY A JURY (*ante*, p. 63).

Appeal lies to the quarter sessions if the sum adjudged to be paid exceeds 5*l.* (s. 110).

Penalty.

PENALTY.—(i.) *First Offence*.—*Forfeiture* of the value of the dog (to be paid to the owner) and, in addition,

a FINE not exceeding 20*l.*, and, in default of *payment*, imprisonment, with or without hard labour, according to scale (p. 111); or, IMPRISONMENT, with or without hard labour, for not more than SIX MONTHS. (ii.) *Second Offence (on indictment)*.—Imprisonment for not more than eighteen months, with or without hard labour.

As to *mitigation* of forfeitures, &c., see *ante*, p. 105.

Anyone who unlawfully has *in his possession, or on his premises*, any *stolen dog*, or the *skin of any stolen dog*, knowing such dog to have been stolen, or such skin to be the skin of a stolen dog, commits an offence punishable on summary conviction (24 & 25 Vict. c. 96, s. 19).

Having unlawful possession of stolen dog.

Appeal lies if the sum adjudged to be paid exceeds 5*l.* (s. 110).

PENALTY.—FINE, not exceeding 20*l.*, and, in default of *payment*, imprisonment with or without hard labour, according to scale (p. 111).

Penalty.

A *second offence* amounts to an *indictable* misdemeanour, punishable with eighteen months' imprisonment.

Any person who *corruptly* takes any *money or reward*, directly or indirectly, under pretence or on account of aiding any person *to recover a stolen dog*, or a dog which is in the possession of some person other than the owner, commits an *indictable* misdemeanour. [*Imprisonment* for eighteen months.] (24 & 25 Vict. c. 96, s. 20.)

Corruptly taking reward to recover stolen dog.

S. 22 (*ib.*) appears to be intended to authorize a justice to restore a stolen dog or its skin to the owner.

As to advertising offers of *reward* for the restoration of *stolen dogs*, see *ante*, p. 169.

The owner of a dog is liable in *damages* for injury done by the dog to any *cattle*; and the word "*cattle*" is defined to *include* horses, mules, asses, sheep, goats and swine—*i.e.*, the word, in addition to the animals within its ordinary meaning, comprises the classes of animals specifically included. It is *not* necessary for the person seeking such damages to show a *previous mischievous propensity* in the dog or the owner's knowledge thereof, nor to show that the injury was *attributable to neglect* on the part of the owner (6 Edw. 7, c. 32, s. 1 (i.)). The occupier of any premises, where the dog was kept, or permitted to live or remain, at the time of the injury, is to be deemed *primâ facie* to be the owner. But, where

Injuries by dog to cattle or sheep.

there are more occupiers than one in premises let in separate apartments or lodgings or otherwise, the occupier of the part where the dog was kept, &c., is to be presumed *prima facie* to be the owner (*ib. s. 1 (ii.)*).

It was held under a repealed statute that the owner is liable if his dog kill *trespassing* sheep in driving them off his master's land (*Grange v. Silcock*) (z). And as to the curiously slight amount of evidence sometimes accepted as sufficient to sustain such a claim, cf. *Lewis v. Jones* (a). As to the case of a dog *frightening* horses and thereby causing injury to them, see *Elliot v. Longden* (b).

Claim for
damages
before
justices.

In case the damages claimed do *not exceed 5l.*, the claim may be preferred by complaint before justices sitting in petty sessions, and the amount will be recoverable as a "civil debt" (*ante*, p. 118). The defendant and his wife will, therefore, be compellable witnesses.

Dangerous
dogs.

Order to keep
dog under
control.

Form of
Information,
post, p. 1223.

Any court of summary jurisdiction (*i.e.*, two justices or a stipendiary magistrate) may take cognizance of a complaint that a dog is *dangerous and not kept under proper control*, and, if such appears to be the case, may make an order upon the owner for the dog to be *kept under proper control or destroyed* (34 & 35 Vict. c. 56, s. 2). The court may, it would seem, also direct payment of costs (*ante*, p. 115). Inasmuch as no question of penalty can arise until the order has been made and disobeyed, the application for the order is a *civil proceeding* (cf. *Derby Corporation v. Derby C.C.*) (c); and accordingly, on such application, the parties are competent and *compellable* witnesses (*ante*, p. 171). It is not necessary to prove that the owner knew the dog to be dangerous; and the court may direct that the dog shall be *destroyed* at once without giving any option to the owner as to its control (*Pickering v. March*) (d). Moreover, the owner cannot avoid the making of such an order by merely sending the dog out of the jurisdiction of the particular court before the laying of the information (*Lockett v. Withey*) (dd). The jurisdiction of the court is not

(z) (1897) 77 L. T. 340; 46 W. R. 221; 61 J. P. 709.

(a) (1885) 49 J. P. 198.

(b) (1901) 17 T. L. R. 648.

(c) [1897] A. C. 550; 66 L. J. Q. B. 701.

(d) (1874) 43 L. J. M. C. 143; 22 W. R. 798; 38 J. P. 678.

(dd) (1908), 99 L. T. 838; 25 T. L. R. 16; 72 J. P. 492.

limited to dogs within the jurisdiction at the time when the complaint is made; but it seems probable that, although the words are "any court," the section would be held to be restricted in its operation to cases in which an owner within the jurisdiction fails to keep a dangerous dog under control (*ib.*); and cf. *ante*, p. 10.

Where a dog is proved to have *injured cattle* (including horses, mules, asses, sheep, goats and swine), or *chased sheep*, it may be dealt with under this section (6 Edw. 7, c. 32, s. 1 (iv.)).

Injuring cattle or chasing sheep.

If the order is not obeyed, the owner is liable to a PENALTY of 1*l.* for every day during which he fails to comply with the order, and, in default of *distress*, to imprisonment, *without* hard labour, according to scale (p. 111).

Penalty for disobeying order to keep under control,

Moreover, if a *police officer* has reason to believe that a dog found in a *highway or place of public resort* is a *stray* dog, he may seize and detain it (causing it to be properly fed and maintained) until the owner claims it and pays the expenses of detention (6 Edw. 7, c. 32, s. 3). If the dog wears a *collar* "having inscribed thereon or attached thereto" the address of any person, or *the owner is known*, the chief of police must cause *written notice* to be served on such person, or on the owner, stating that the dog will be liable to be sold or destroyed if not claimed within *seven clear days* after service of the notice. The notice may be served personally, or by leaving it at (or by forwarding it in a prepaid letter to) *either* the address on the collar *or* the usual or last known place of abode of such person or owner. If the dog is not claimed and expenses paid within *seven clear days* after seizure (or, if notice has been given, after service of the notice), the dog may be sold or destroyed "in a manner to cause as little pain as possible"; but it must not be given or sold for the purposes of vivisection.

Constable taking possession of stray dogs.

The Act also provides for the keeping of registers as to the seizure and disposal of dogs, which are to be open to inspection on payment of one shilling by any member of the public.

And as to stray dogs in the *metropolis*, see 30 & 31 Vict. c. 134, s. 18, amended by 6 Edw. 7, c. 32, s. 10 (schedule).

Any person *who takes possession of a stray dog* must

Failure to

notify finding
of stray dog.

forthwith *return* it to its owner or *forthwith* give *written notice* to the chief officer of police of the district where the dog was found. The notice must contain a description of the dog and state the place where it was found and the place where it is being detained (6 Edw. 7, c. 32, s. 4). Failure to comply with the provisions of this section renders the person who has taken possession of the dog liable to a

PENALTY of 2*l.* recoverable by *distress*, and, in default, imprisonment *without* hard labour according to scale (p. 111).

Failure to
bury carcases
of "cattle."

It is, too, an offence punishable with a like penalty, for any person "knowingly and without reasonable excuse" to permit the *carcase* of any head of cattle (including horses, mules, asses, sheep, goats and swine) belonging to him to *remain unburied* in a field or other place to which dogs can gain access (6 Edw. 7, c. 32, s. 6).

Suffering
ferocious dog
to be at large
unmuzzled in
urban dis-
tricts, &c.
Setting on
dog to attack.

In urban districts, or other districts in which the Town Police Clauses Act is in force, anyone commits an offence who, *in any street*, to the annoyance or danger of the residents or passengers, suffers to be at large any *unmuzzled ferocious dog*, or sets on or urges *any dog* or other animal to attack, worry, or put in fear any person or animal (10 & 11 Vict. c. 89, s. 28).

If Part VII. of the Public Health Acts Amendment Act, 1907, has been applied in any district, the word "street" includes "any place of public resort or recreation ground belonging to or under the control of the local authority and any unfenced ground adjoining or abutting upon any street" (7 Edw. 7, c. 53, s. 81).

Appeal lies to the quarter sessions.

PENALTY.—FINE, not exceeding 2*l.*, and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111), but possibly for not more than fourteen days (cf. however, *R. v. Hopkins*)^(e); or, IMPRISONMENT, *without* hard labour, for not more than FOURTEEN DAYS.

One justice may convict, but, as to the limits of his power of punishment, see *ante*, p. 12.

As to the power to order defendant to make *amends* in the Metropolitan Police District, see 2 & 3 Vict. c. 47, ss. 54 (ii.), 62.

(e) [1893] 1 Q. B. 621; 62 L. J. M. C. 57; 57 J. P. 153.

In municipal boroughs the town council, and elsewhere (except in certain specified localities) justices in petty sessions may, if a *mad dog or a dog suspected of being mad be found* within their jurisdiction, make an *order* placing restrictions on dogs not under proper control. And any person who acts in *contravention* of such order is obnoxious to a

Order as to
mad dogs.

PENALTY, not exceeding 1*l.*, and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111 ; 34 & 35 Vict. c. 56, s. 3).

Moreover, in urban districts, or other districts in which the Town Police Clauses Act is in force, anyone commits an offence who, *in any street*, to the annoyance or danger of the residents or passengers, (a) *suffers a dog* of which he is owner to go *at large*, if he knows, or has reasonable ground for believing, it to be in a *rabid state*, or to have been bitten by any other dog or other animal in a *rabid state* ; or (β), *after public notice* given by any justice directing dogs to be confined on account of suspicion of canine madness, *suffers a dog* to be *at large* during the time specified in the notice (10 & 11 Vict. c. 89, s. 28).

Suffering dog
suspected of
madness, or
any dog after
public notice,
to be at large
in urban
districts, &c.

Appeal lies to quarter sessions.

PENALTY.—FINE, not exceeding 2*l.*, and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111), but possibly for not more than fourteen days (cf. *R. v. Hopkins*) (*f*) ; OR, IMPRISONMENT, *without* hard labour, for not more than FOURTEEN DAYS.

Penalty

One justice may convict, but, as to the limits of his power of punishment, see *ante*, p. 12.

See also, within the Metropolitan Police District, 2 & 3 Vict. c. 47, s. 61.

There is, too, power conferred on the Board of Agriculture to make orders as to muzzling dogs and keeping them under control ; and as to the seizure, detention, &c., of stray and unmuzzled dogs, &c., see *ante*, ANIMALS, DISEASES OF (pp. 259, 260). And see the *Rabies Order*, [1897] March 23rd, No. 5,578, under which horses, mules, asses and *dogs* are to be “animals” within the Diseases of Animals Act, 1894, and “rabies” a “disease” for the purposes of the order and of ss. 19, 20, 43 and 44 of the Act.

Rabies order.

Regulations
as to wearing
of collars.

Form of
Information,
post. p. 1223.

Pack of
hounds.
"Sheep
dogs."

The Dogs Order of 1906 (October 22nd, No. 7,124) revoked article 10 of the earlier order, which related to the seizure, detention and disposal of stray dogs, and also all regulations of local authorities relating to these matters or to the muzzling of dogs. The later order, however, enables *local authorities* to make *regulations* as to the *wearing of collars by dogs in a highway or place of public resort*, and provides that any dog in respect of which an offence is being committed may be seized and treated as a stray dog under s. 3 of 6 Edw. 7, c. 32. On breach of such a regulation, the owner of the dog, the person for the time being in charge, and the person allowing it to be in the highway, &c., are "each according to and in respect of his own acts and defaults" deemed guilty of an offence against the Diseases of Animals Act, 1894. The PENALTY is 20*l.* (see *ante*, p. 262).

There is an exemption as to packs of hounds and dogs whilst being used for sporting purposes, or for the capture or destruction of vermin, or for the driving or tending of cattle or sheep; and it has been held that a puppy registered as a member of a pack and marked on the ear, but "walked" by a farmer, was within the exemption (*Burton v. Atkinson*) (*g*). "This dog," said *Alverstone*, C.J., "is within the meaning of the expression 'a pack of hounds.'" Yet, in another case, where the regulation exempted "any pack of hounds," *Alverstone*, C.J., while adhering to the decision in *Burton v. Atkinson*, supported a conviction on the ground that, "though the dog was a member of a pack and out at walk in the ordinary way, it was not for the time being in any sense a *member of the pack in its corporate capacity*;" while *Jelf*, J., supported the conviction on the ground that there was "nothing to show that the dog had *ever become a member of the pack at all*" (*Rasdall v. Coleman*) (*gg*). In the case last cited it was found that the dog "belonged to the B. hunt, and was registered as one of the pack of hounds of such hunt. . . . It was wearing a collar with 'Blankney Hunt, 17' inscribed on a plate. . . . In the right ear it was marked B. 17;" but

(*g*) (1908) 98 L. T. 748; 72 J. P. 198; 21 Cox, 575; 24 T. L. R. 198.

(*gg*) (1909) 100 L. T. 934; 25 T. L. R. 638; 73 J. P. 377; 7 L. G. R. 1166.

Jelf, J., while expressing dissent from *Burton v. Atkinson*, was of opinion that it was "distinguishable."

Anyone who uses a dog for the purpose of drawing a carriage, cart, truck or barrow along a *public highway* is liable to a PENALTY not exceeding 2*l.* for the first, or 5*l.* for a subsequent offence. In default, the penalty is recoverable by imprisonment with or without hard labour (17 & 18 Vict. c. 60, s. 2).

Using dogs for draught purposes.

As to ill-treating, killing, or wounding dogs, see *ante*, ANIMALS, CRUELTY TO (pp. 247, 251, 255, 257).

DOG LICENCES.

Licences for dogs expire on December 31st in each year, but police prosecutions are, as a rule, not instituted in the month of January, so that a reasonable time may be afforded to the owners of dogs to renew their licences. Blind men's dogs are exempted from duty, and provision is also made for exempting dogs (not exceeding two in number) if kept by a farmer solely for the purpose of tending sheep or cattle on his farm, or used by a shepherd in the exercise of his calling. But the person claiming exemption must be protected by a certificate founded on a proper declaration (41 Vict. c. 15, ss. 13, 21, 22). The grant of a certificate of exemption for *farmers' or shepherds' dogs* now requires the *previous consent* of a *petty sessional court*, but such consent must not be withheld if the court is of opinion that the statutory conditions for exemption apply (6 Edw. 7, c. 32, s. 5). An application for consent is made by sending the necessary declaration to the justices' clerk at the petty sessional court house, and any notice of objection thereto must also be sent to the clerk; but the appearance of the applicant for a consent is dispensed with except where the application is opposed and the court considers such appearance to be necessary (Dogs Act Rules, 1906). The collection of the duty on dog licences is now transferred to county councils and the councils of county boroughs; and, by *Order in Council (Local Taxation Licences, England)*, 19 Oct., 1908 (clause xiii.), if the consent is granted, the justices' clerk must forward the applicant's declaration, with the consent thereon, to the clerk to the council of the county or county borough in

Dog licences.

which the applicant resides. Subject to the justices being satisfied that the statutory conditions for exemption are fulfilled, a farmer or shepherd is entitled to exemption in respect of *two* dogs, and the justices cannot cut down the exemption to *one* dog because they think that one dog is sufficient for the farm (*Johnson v. Wilson*) (*h*). No licence is necessary for a puppy under the age of *six months*, nor for a hound under the age of twelve months, belonging to a master of hounds, if it has not been entered in or used with any pack.

Keeping dog
without
licence.

Refusing to
produce
licence.

Every person who *keeps a dog, above the age of six months, without having in force a licence* authorizing him to do so, or who keeps a greater number of dogs than he is licensed to keep, commits an offence (30 Vict. c. 5, s. 8). So, too, any licensed person commits a similar offence if he does not *produce* and deliver his *licence* to an excise officer or police constable when requested so to do (*ib.* s. 9). As to production to an officer of the county council, see clause x. of the Order of 19 Oct., 1908.

PENALTY.—FINE, not exceeding 5*l.*, and in default of distress, imprisonment, *without* hard labour, according to scale (p. 111).

The court should not dismiss the summons on the ground that, in their opinion, the defendant was entitled to a certificate of exemption (*cf. Phillips v. Evans*) (*hh*).

The penalty cannot be reduced to less than one-fourth, except in the case of a *first offence*; and this is so, even though there may be no allegation in the information that the charge is not in respect of a first offence (*cf. ante*, p. 106, and *Murray v. Thompson*) (*i*).

The penalty is an excise penalty, but, as we have seen, the duties are now collected by the "county councils." If the police prosecute, half the penalty goes to the superannuation fund, half to the council (41 Vict. c. 15, s. 23; *Order in Council*, 19 Oct., 1908).

Evidence as
to "keeping,"
&c.

The person in whose custody, charge, or possession, or in whose house or premises any dog shall be found or seen, is to be deemed to be the person who *keeps* the dog

(*h*) [1909] 2 K. B. 497; 78 L. J. K. B. 912; 73 J. P. 396; 25 T. L. R. 663; 101 L. T. 315.

(*hh*) [1896] 1 Q. B. 305; 65 L. J. M. C. 101; 44 W. R. 429; 60 J. P. 120.

(*i*) (1889) 22 Q. B. D. 142; 58 L. J. M. C. 41; 53 J. P. 70.

until the contrary be proved; and it is not, of course, necessary to establish that the defendant is the *owner* of the dog (30 Vict. c. 5, s. 8). Moreover, proof of the dog's age, if the defendant seeks to establish exemption, lies upon him (41 Vict. c. 15, s. 19).

Keeping dog
without
licence
—*contd.*

If the licence be taken out on the same day that the officer has discovered the dog, but *after* the discovery, it will afford no answer to the charge (*Campbell v. Strangers*) (*j*). The licence, in fact, is now stamped with the hour as well as the day of issue. Proceedings may be instituted either by the police or excise authorities.

DRIVING AND RIDING.

Bicycles, tricycles, velocipedes, and other similar machines are carriages within the Highway Acts (51 & 52 Vict. c. 41, s. 85). The following *offences* relate to riding or driving upon *highways* generally, and are defined by the General Highway Act, 1835 (5 & 6 Will. 4, c. 50).

Offences in
highways.

- (1) The *owner* of any waggon, cart, or other such carriage, using or allowing it to be used *without his name and description* painted thereon as required by the section, or suffering the same to become illegible, or causing a fictitious name to be painted on the vehicle (s. 76).

Cart without
owner's name.

The word "carriage" refers to vehicles *ejusdem generis* with a waggon, see *Danby v. Hunter* (*k*).

PENALTY.—FINE, not exceeding 2*l.*, and, in default of distress, imprisonment, *with or without* hard labour, according to scale (p. 111).

- (2) Acting as the *driver of two carts*, drawn by one horse each, unless the horse drawing the hinder cart is attached by a rein (not more than four feet long) to the back of the foremost cart (s. 77).

One driver for
two carts.

PENALTY.—FINE, not exceeding 1*l.*, and, in default of distress, imprisonment, *with or without* hard labour, according to scale (p. 111). The section seems to be so framed that if, *e.g.*, one of the carts were drawn by two horses, or there were three carts being driven, the offence

(*j*) (1878) 3 C. P. D. 105; 47 L. J. M. C. 6; 37 L. T. 672; 42 J. P. 39.

(*k*) (1879) 5 Q. B. D. 20; 49 L. J. M. C. 15; 44 J. P. 283.

would be an *indictable* misdemeanour and not punishable summarily. Cf. Offence (e), *post*, p. 422.

Arrest of
driver with-
out warrant.

A *driver* or *rider* found committing any one of the following offences (3)—(13) inclusive, may be apprehended without warrant by any person who may see the offence committed, and conveyed before a justice “to be dealt with according to law.” And should the driver or rider refuse to discover his name, the court may commit him to prison for not more than three months with hard labour; or he may be proceeded against for a penalty, by a description of his person and the offence, as a person “unknown” (s. 78; *sed cf. ante*, p. 12, as to the power of a *single* justice). For PENALTY, see p. 421.

Several
offences
by drivers

- (3) Riding on waggon, &c., or on a horse drawing the same, without someone on foot or horseback to act as guide (except where the carriage or cart is driven with reins, and is conducted by a person holding the reins of all the horses) (s. 78). Cf. Offence (a), *post*, p. 422.
- (4) By negligence or wilful misbehaviour causing hurt or damage to any person, horse, cattle, or goods conveyed in any carriage upon the highway (s. 78).
- (5) Quitting road and going on the other side of the hedge or fence (s. 78).
- (6) Negligently or wilfully being at such distance from carriage, or in such situation, as not to have the direction or government of horses, &c. (s. 78). This provision is applicable where a driver leaves the carriage standing by the roadside (*Phythian v. Baxendale*) (l). Cf. Offence (b), *post*, 422.
- (7) Leaving cart, &c., so as to obstruct passage of highway (s. 78). The offence may be complete although the cart was not left unattended; but the fact that there was someone in attendance may be material in considering whether the passage was, *in fact*, obstructed (*Hinde v. Evans*) (m). Cf. Offence (g), *post*, p. 423.
- (8) Driving any waggon, &c., not having owner's name painted thereon, and refusing to tell such name (s. 78). Cf. Offence (1).
- (9) Not keeping waggon, horses, &c., on near side of

(l) [1895] 1 Q. B. 768; 64 L. J. M. C. 174; 59 J. P. 217.

(m) (1906) 96 L. T. 20; 4 L. G. R. 1152; 70 J. P. 548; 21 Cox, 331.

road when meeting any other waggon, horses, &c. (s. 78). Cf. Offence (c), *post*, p. 422.

(10) Wilfully preventing any person from passing (s. 78). Cf. Offence (d), *post*, p. 422.

(11) Hindering free passage of any person, waggon, horses, &c., by negligence or misbehaviour (s. 78).

(12) Not keeping waggon, &c., on near side for the purpose of allowing such free passage (s. 78).

(13) Riding any horse or beast, or driving any sort of carriage, furiously, so as to endanger the life or limb of any passenger (s. 78). Furious riding, as well as driving, is punishable under this clause, notwithstanding that the penal part of the enactment speaks of drivers only (*Williams v. Evans*) (n). Cf. Offence (f), *post*, p. 422.

Furious riding or driving.

PENALTY, in respect of each of the offences (3)—(13) inclusive.—FINE, not exceeding 5*l.*, if the defendant is not the owner of the vehicle, and, not exceeding 10*l.*, if he is such owner; and in default of *payment*, imprisonment, with or without hard labour, according to scale (p. 111), but not exceeding *six weeks*.

Penalty for offences 3–13.

In districts to which Part VII. of the Public Health Acts Amendment Act, 1907, has *been applied*, anyone who *rides or drives* so as to *endanger the life or limb* of any person, or to the common danger of the passengers in any thoroughfare, is liable to a PENALTY of 2*l.* The offender may be arrested without warrant by any constable who witnesses the offence (7 Edw. 7, c. 53, s. 79).

Public Health Acts Amendment Act, 1907.

In case a person having the charge of any carriage or vehicle has “by wanton or furious driving or racing, or other wilful misconduct, or by wilful neglect,” caused actual bodily harm to anyone, the justices may, instead of dealing summarily with the matter, commit the accused for trial for an indictable misdemeanour under 24 & 25 Vict. c. 100, s. 35. The rider of a bicycle is within the section (see *R. v. Parker*) (o).

When actual bodily harm is caused.

(14) Wilfully riding on any footpath by the side of any road, made or set apart for the use of foot passengers; or wilfully leading or driving any horse, cattle, or carriage of any description, or any truck

Riding or leading a carriage on footpath.

(n) (1877) 1 Ex. D. 277; 35 L. T. 864; 51 J. P. 151.
(o) (1895) 59 J. P. 593.

Form of
Information,
post, p. 1224.

or sledge, upon such path (5 & 6 Will. 4, c. 50, s. 72).

This provision extends only to footpaths which happen to be *by the side* of a road (*R. v. Pratt* (p)). As to the power of arrest, see *post*, p. 536; and cf. *Brotherton v. Tittensor* (q), which further shows that it is not necessary to prove that the rider (in that case a bicyclist) has done injury to the footway or caused annoyance to the persons using it. Cf. Offence (j), *post*, p. 423.

PENALTY.—FINE, not exceeding 2*l.* over and above the damage (if any); and, in default of *distress*, imprisonment, *with or without* hard labour, according to scale (p. 111).

Procedure
under Act
of 1835.

The penalties for offences (1)—(14) inclusive are payable to the surveyor of highways, unless there is an informer, in which case the latter takes half (s. 103).

Appeal lies to quarter sessions (s. 105). As to the scale of costs, see s. 110.

Offences in
streets.
10 & 11 Vict.
c. 89.

The following offences relate to *streets* within urban or other districts to which the Town Police Clauses Act (10 & 11 Vict. c. 89) is applicable (see further as to *procedure*, *post*, p. 772):—

Cf. *Burton v. Nicholson*,
cited *post*,
p. 1188.

Any person commits an offence if, to the *obstruction, annoyance, or danger* of the residents or passengers: (a) Having the charge of any waggon, cart, or carriage, he rides on the shafts, or rides on the vehicle itself, or on any animal drawing the same, without having reins and holding the same; *or*, (b) having the charge of any waggon, cart, or carriage, he is at such a distance as not to have due control over every animal drawing the same; *or*, (c) he does not, *in meeting any other carriage, keep his own vehicle to the near side, or, in passing any other carriage keep his own vehicle to the off side (except in case of actual necessity, or where there is some sufficient reason)*; *or*, (d) by obstructing the street, he wilfully prevents any person or carriage from passing him or his vehicle; *or*, (e) at one time, he drives more than two carts or waggons, *or*, if driving two, he has not the halter of the horse in the latter securely fastened to the back of the first, *or* has such halter of a greater length than four feet; *or*, (f) he *rides or drives furiously any*

Furious
riding or
driving.

(p) (1868) L. R. 3 Q. B. 64; 37 L. J. M. C. 23; 16 W. R. 146.

(q) (1896) 60 J. P. 72.

horse or carriage, or drives furiously any cattle; or, (g) he causes any public carriage, sledge, truck, or barrow, with or without horses, or any beast of burden, to stand longer than necessary for loading or unloading, &c.; or, (h) by means of any cart, carriage, barrow, &c., or other means, he wilfully interrupts any public crossing or obstructs any public footpath or thoroughfare; or, (i) he causes any tree, timber, &c., to be drawn upon any carriage without means of safely guiding the same; or, (j) he leads or rides any horse, &c., or draws or drives any cart, carriage, barrow, &c., upon any footway, or fastens any horse or other animal so that it stands across or upon any footway (s. 28).

Obstructing footpath, &c.

Form of Information, *post*, p. 1224.

And as to Offence (h), see also *post*, pp. 535, 536.

In the case of offence (f), if Part VII. of the Public Health Acts Amendment Act, 1907, has been applied in any district, the word "street" includes "any place of public resort or recreation ground belonging to, or under the control of, the local authority and any unfenced ground adjoining or abutting upon any street" (7 Edw. 7, c. 53, s. 81).

Public Health Acts Amendment Act, 1907.

PENALTY.—FINE, not exceeding 2*l.*, and, in default of distress, imprisonment without hard labour, according to scale (p. 111); or, IMPRISONMENT, without hard labour, for not more than FOURTEEN DAYS.

Penalty.

As to persons drunk in charge of a horse, carriage, &c., see *post*, INTOXICATING LIQUORS (p. 607).

See further as to BICYCLES, *ante*, p. 328.

As to offences within the Metropolitan Police District, see 2 & 3 Vict. c. 47, s. 54.

Lights on Vehicles Act, 1907.

By the Lights on Vehicles Act, 1907, *existing* bye-laws and regulations as to such lights ceased to have effect, but power was reserved to make fresh bye-laws and regulations "imposing obligations *additional* to those imposed by the Act."

Vehicles to carry lights at night.

7 EDW. 7, c. 45.

Everyone who *causes or permits* any vehicle to be in a street, highway, or road, to which the public have access, *between one hour after sunset and one hour before sunrise*, is required to *provide* such vehicle with—

Forms of Information, *post*, pp. 1225, 1226.

(a) A lamp or lamps in proper working order, and so

constructed (and capable of being so attached) as when lighted to display *to the front* a *white light* visible for a reasonable distance. If only *one* lamp is provided it must be *on the off or right side*, and if the lamp or lamps *permit a light* to be seen in the *rear*, that light must be *red* ;

(β) And also (if the vehicle carries timber or any load *projecting more than six feet to the rear*) a lamp or lamps such as when lighted display *to the rear* a *red light* visible for a reasonable distance.

Everyone *driving or being in charge* of a vehicle in a street, &c., during such period is required to keep the lamp or lamps properly *trimmed, lighted and attached*. But a driver or person in charge is *not* to be convicted if he proves that the offence arose through the neglect or default of *some other person* whose *duty* it was to *provide* the vehicle with a lamp or lamps (7 Edw. 7, c. 45, ss. 1, 2).

Penalty.

PENALTY.—*First offence*—FINE of 2*l.* *Second offence*—FINE of 5*l.* The fines are recoverable by *distress* and, in default, imprisonment *without* hard labour according to scale (p. 111).

To what vehicles the Act applies.

The Act applies to *machines or implements* of any kind drawn by *animal* traction, but *not* to vehicles drawn or propelled *by hand*, nor to such bicycles, tricycles, locomotives and motor cars as are already provided for by statute (*ib.* s. 5).

The Act also applies to vehicles in the service of the Crown, subject to exceptions made by Order in Council ; and the person whom “the department” names is to be deemed to be “the person actually responsible” (*ib.*).

Orders of exemption.

Power is given to the council of a *borough*, with the approval of the Secretary of State, to exempt vehicles carrying specified inflammable goods, or vehicles used within specified areas where inflammable goods are stored or dealt with. Power is also conferred on *county* councils to make orders of exemption for the purpose of carrying on harvesting operations (ss. 3, 4).

DRUGGING.

Everyone commits a *felony*, punishable only on indictment, who—

- (a) Unlawfully applies or administers, or causes to be taken, or attempts to apply or administer or cause to be taken, any chloroform, laudanum, or other *stupefying or overpowering drug, matter, or thing*, with intent to enable himself or any other person to commit, or with intent to assist any other person in committing, any *indictable offence*. [Penal servitude for life.] (24 & 25 Vict. c. 100, s. 22.) This offence is triable only at assizes.
- (b) Unlawfully and maliciously administers or causes to be administered to, or taken by, any person any *poison or other destructive or noxious thing* so as to *endanger the life* of the person to whom it is administered, or so as to inflict any *grievous bodily harm* upon such person. [Penal servitude for ten years.] (24 & 25 Vict. c. 100, s. 23.)

Administering chloroform or other stupefying drug.

Administering poison, &c., so as to endanger life or do grievous bodily harm.

The jury may acquit of this felony, and yet convict of the misdemeanour (c) (s. 25). But, if grievous bodily harm were, *in fact*, inflicted, the felony should be charged although the *intent* may have been merely to annoy.

Everyone commits a *misdemeanour*, punishable only on indictment, who—

- (c) Unlawfully and maliciously administers or causes to be administered to, or taken by, any person, any *poison or other destructive or noxious thing* with intent to *injure, aggrieve, or annoy* the person to whom it is administered. [Penal servitude for five years.] (24 & 25 Vict. c. 100, s. 24.)

Administering poison, &c., with intent to injure or annoy.

It would be an offence within the last-cited section (s. 24) to administer cantharides to a woman, with intent to excite sexual passion and so procure possession of her person, if the drug were administered in sufficient quantity to produce an effect upon her (*R. v. Wilkins* (r); and see offence (d), *infra*). But cantharides is not a recognised “poison,” and if the amount administered were insufficient to produce any effect on the human

See cf. : post, p. 767.

system, it could not be regarded as a “destructive or noxious thing” within the meaning of this section (*R. v. Hennah* (s); and cf. *R. v. Cramp* (t)).

It is now, however, specially provided that everyone commits a *misdemeanour*, punishable only on indictment, who—

Administer-
ing drug to a
female with a
view to carnal
connexion.

(d) Applies or administers to, or causes to be taken by any woman or girl any *drug, matter, or thing* with intent to *stupefy or overpower* so as thereby to enable any person to have *unlawful carnal connexion* with such woman or girl. [Imprisonment for two years.] (48 & 49 Vict. c. 69, s. 3 (iii).)

But no person can be convicted of an offence under this section upon the evidence of one witness only, unless such witness be corroborated in some material particular by evidence *implicating the accused*.

The husband or wife of the defendant may be called as a witness either for *the prosecution* or defence, and *without the defendant's consent* (*ante*, p. 174); and if the girl were under SIXTEEN years of age, the PROCEDURE of the *Children Act*, 1908, would be applicable (see *ante*, pp. 379—384; and *post*, p. 803).

This offence is triable only at assizes.

As to drugging animals, see ANIMALS (*ante*, p. 258).

And see ABORTION (*ante*, p. 208).

DRUNKENNESS.

See INTOXICATING LIQUORS (*post*, p. 605); and POLICE OF TOWNS (*post*, p. 774).

EDUCATION (ELEMENTARY).

Attendance at School.

Obligation of
parent to
educate.

The parent of every child *between the ages of five and fourteen years* must cause such child to receive efficient elementary education in reading, writing, and arithmetic; and if the parent fail to perform this duty, he becomes

(s) (1877) 13 Cox, 547; 41 J. P. 71.

(t) *Ante*, p. 208.

liable to the orders and penalties prescribed by statute (39 & 40 Vict. c. 79, ss. 4, 48).

If the parent, or other person *in loco parentis*, habitually and *without reasonable excuse* neglects to provide efficient elementary instruction for the child, or if the child is found habitually wandering, or not under proper control, or in the company of rogues, vagabonds, disorderly persons, or reputed criminals, the local education authority, after due warning to the parent, must apply, by complaint to a court of summary jurisdiction, for an *order* requiring the child to attend some certified school to be named in such order (*ib.* s. 11; 2 Edw. 7, c. 42, ss. 1, 5). An order, based on an omission to provide instruction, cannot, however, be made unless the child is under twelve (but see further, *post*, p. 429), or, being between twelve and fourteen, is prohibited either to a limited extent or generally from being taken into employment. This prohibition will not exist if the child has obtained a certificate of proficiency or due attendance under s. 5 of the Act of 1876 (*Winyard v. Toogood*) (*u*).

Attendance
order.

As to an "attendance order" requiring attendance at a *Day Industrial School*, see *ante*, p. 189, and Form in APPENDIX, *post*, p. 1148.

Provision is made for *blind or deaf* children by 56 & 57 Vict. c. 42, the age for compulsory attendance of a *deaf* child being *seven* to sixteen years (ss. 1, 11); and, if the parties fail to agree, the amount of weekly contribution towards the expenses incurred may be settled, on the application of the school authority or the parent, by a *court of summary jurisdiction* (s. 9). Again, provision is made for *defective or epileptic* children by 62 & 63 Vict. c. 32. The age for attendance in such cases also is seven to sixteen (ss. 4, 11); and the parent must, if required, cause the child to attend for examination under a PENALTY of 5*l.* (s. 1 (iv.)). In case of an *epileptic* child, the authority may apply to a *court of summary jurisdiction* for an *order* requiring the child to be sent to a certified school for epileptics (s. 4 (ii.)). The amount of contribution towards expenses may be settled as for blind and deaf children (s. 8). These contributions are recoverable

Attendance of
blind, deaf,
defective, and
epileptic
children.

(*u*) (1883) 10 Q. B. D. 218; 52 L. J. M. C. 25; 48 L. T. 229; 47 J. P. 325.

as *civil debts* (*ante*, p. 118); and a court competent to make the order for contribution may subsequently *revoke* or *vary* it.

Reasonable
excuse.

Moreover, the parent may plead as "reasonable excuse" that there is not within two miles, by the nearest road, from the residence of the child any public elementary school open which the child can attend; or that the absence of the child from school was caused by sickness or some other unavoidable cause (39 & 40 Vict. c. 79, s. 11). But mere distance from school is not now a sufficient excuse where the local education authority has provided suitable means of conveyance for a child "between a reasonable distance of its home and a public elementary school" (7 Edw. 7, c. 43, s. 14). See, too, p. 430.

School to be
nominated.

The parent may, if he please, select some certified efficient school to be named in the order; but the local authority must be prepared, if necessary, to name a public elementary school and to satisfy the court that the managers are willing to receive the child (*Thompson v. Rose*) (*v*). Should the parent neglect or refuse to select a school, and should there be no school within the two miles' limit, nor one to which suitable means of conveyance are provided, the court would seem to have no power to make any order.

No costs, as a rule, ought to be imposed upon parents in respect of proceedings for obtaining an attendance order (cf. letter from Home Office, March 5th, 1879; 43 J. P. 199).

Consequences
of non-com-
pliance with
attendance
order.

In the event of *non-compliance* with an *attendance order*, without any reasonable excuse (*vr*), the court, upon complaint made by the local authority, may proceed as follows (39 & 40 Vict. c. 79, s. 12; 63 & 64 Vict. c. 53, s. 6):—

First case of
non-com-
pliance.

- (i.) *In the first case of non-compliance*—(a) if the parent, &c., does not appear, or does appear but fails to satisfy the court that he has used all reasonable efforts to enforce compliance with the order, the court may impose a PENALTY not exceeding (with the costs) 20s.; (b) if the parent, &c., satisfies the court that *he has used all reasonable efforts to enforce*

(*v*) (1892) 40 W. R. 155; 56 J. P. 439.

(*vv*) *Regular attendance at another school might afford such an excuse* (*per Darling, J.*) *Isle of Wight C.C. v. Holland* (1909), 73 J. P. 507.

compliance with the order, the court may, without inflicting a penalty, order the child to be sent to a certified *day* industrial school, or if there is no such school suitable, then to a certified industrial school. **Forms, 11, 14, pp. 1146, 1148, and Sch. B. (1, m), p. 1155.**

(ii.) In the second or a subsequent case of non-compliance, the court may order the child to be sent to a certified *day* industrial school, or, if there is no such school suitable, then to a certified industrial school, and may, in its discretion, also impose a PENALTY not exceeding (with the costs) 20s.; or, the court may without making such an order, impose the penalty in respect of each non-compliance. **Second or subsequent case of non-compliance.**

As to *day* industrial schools, see *ante*, p. 188.

A complaint in respect of a continuing non-compliance cannot be repeated at any less interval than two weeks.

As to cases where the fine does not exceed 5s., see as to "costs" and "fees," *ante*, p. 116.

The amount of the penalty is recoverable by *distress*, and, in default, imprisonment, *without* hard labour, according to scale (p. 111); but if the amount of the penalty is not paid, the costs of a distress warrant may be added (*cf. Cook v. Plaskett*) (*w*).

The adjudication in respect of a former non-compliance may be proved by the production of the register of the court, or a certified extract therefrom, with evidence of the identity of the defendant, but without the production of a certified copy of the conviction (*cf. London School Board v. Harvey*) (*x*). *Cf. ante*, p. 29.

Every child so sent to an industrial school is to be deemed to be sent under the Acts relating to industrial schools, and the parent is liable to contribute to his maintenance accordingly (*ante*, p. 185). **Maintenance at industrial school.**

The education authority are required, with the approval of the Education Department to make *bye-laws* regulating the attendance, &c., of children, *under fourteen years of age*, providing for the total or partial exemption of children between *twelve* and *fourteen*, when certified by an inspector to have reached a standard of education specified in the bye-law, and fixing the penalties to be recoverable in case of disobedience without reasonable excuse. Proceedings may be taken in respect of acts in **Bye-laws as to children under 14.**

(*w*) (1882) 46 L. T. 383; 47 J. P. 265.

(*x*) (1879) 4 Q. B. D. 451; 48 L. J. M. C. 130; 43 J. P. 734.

contravention of such bye-laws notwithstanding that the acts complained of amount to habitual neglect to provide efficient elementary education within 39 & 40 Vict. c. 79, s. 11 (*ante*, p. 427). But such proceedings must be commenced by the direction of at least two members of the education authority (33 & 34 Vict. c. 75, s. 74; 39 & 40 Vict. c. 79, ss. 21, 23, 38; 43 & 44 Vict. c. 23, s. 4; 63 & 64 Vict. c. 53, s. 6).

Penalty.

The PENALTY for breach of a bye-law is not to exceed (with the costs) 20s. in respect of each offence, and will be recoverable by *distress*, and in default, imprisonment, *without* hard labour, according to scale (p. 111).

The court may, however, order the child to attend school and direct that the penalty shall attach only in the event of non-compliance with such order (36 & 37 Vict. c. 86, s. 24 (iii.)).

Sending a child to the door of a school, the managers of which for good reason refuse to receive it (there being other schools available), is not a compliance with a bye-law requiring due attendance (*Jones v. Rowland*) (*y*).

A *parent or employer* may be summoned to *produce* a child required by bye-law to attend school (cf. *post*, p. 434).

Excuses for non-attendance.

As to the meaning of "reasonable excuse," it may be added that the particular excuses mentioned (*ante*, p. 428) would seem, in view of the earlier decisions, to be merely illustrative. Thus, in one case, a child twelve and a half years old was working in the second standard only, but could read and write sufficiently well. It was found as a fact that the child's earnings formed a considerable part of the family income, being, indeed, necessary to the support of the family; and, under these circumstances, a magistrate was held to be justified in finding that there was a reasonable excuse for the child's non-attendance at school (*London School Board v. Duggan*) (*z*).

Truancy.

Moreover, if the parent makes reasonable efforts to secure the attendance of the child by despatching him to school at a proper hour, but the child plays truant, without the knowledge of the parent, the latter ought not to

(*y*) (1899) 80 L. T. 630; 63 J. P. 454.

(*z*) (1884) 13 Q. B. D. 176; 53 L. J. M. C. 104; 32 W. R. 768; 48 J. P. 742.

be mulct in a penalty (*Belper, &c., Committee v. Bailey*) (a); though the child might, nevertheless, be properly sent to an industrial school (*Hewett v. Thompson*) (b). The truancy of the child is, indeed, not a "reasonable excuse" within the meaning of the statute, although there may have been no personal default on the part of the parent; so that the court, in such a case, ought to make an attendance order (*London County Council v. Hearn*) (bb).

Excuses for non-attendance—*contd.*

The attendance order may be made upon the mother, or other person having the actual custody of the child, although the father may be still alive. But no penalty can be imposed on any person other than the one named in the order. Thus, a mother could not be made liable after the father's death in respect of an attendance order made upon the latter (*Hance v. Fairhurst*) (c). And the person named in the order cannot get rid of responsibility arising thereunder by allowing the child to take up his abode with somebody else; at any rate, unless there has been something in the nature of a permanent adoption of the child by this other person (*London School Board v. Jackson*) (d).

Who is liable under the attendance order.

Where a child is apparently of the age alleged, the onus is upon the defendant to show that he is not of that age; and, if the child is attending an elementary school which is not "public," it lies on the defendant to prove that it is "efficient." A certificate purporting to be under the hand of the principal teacher of a public elementary school, stating that a child is or is not attending such school, or that a child has been certified to have reached a particular standard, is to be deemed evidence of the facts stated (36 & 37 Vict. c. 86, s. 24). An education authority may appear by its clerk or by any member authorized by resolution (33 & 34 Vict. c. 75, s. 85); and in proceedings under the Education Acts, any person may appear by a member of his family or any other person authorized by him (36 & 37 Vict. c. 86, s. 24).

Procedure under the Education Acts.

Where a parent resided in a union, extending into

(a) (1882) 9 Q. B. D. 259; 51 L. J. M. C. 93; 46 J. P. 438.

(b) (1889) 58 L. J. M. C. 60; 60 L. T. 268; 53 J. P. 103.

(bb) (1909) 78 L. J. K. B. 414; 7 L. G. R. 312; 100 L. T. 438; 25 T. L. R. 303; 73 J. P. 211.

(c) (1882) 51 L. J. M. C. 139; 47 J. P. 53.

(d) (1881) 7 Q. B. D. 502; 50 L. J. M. C. 134; 45 J. P. 751.

Procedure
—*contd.*

different counties, proceedings might be commenced before the justices of any one of the counties (*R. v. Eaton*) (*e*). A child in a registered *canal boat*, as also the parent of such child, is to be deemed resident in the place to which the boat is registered as belonging (40 & 41 Vict. c. 60, s. 6).

Provision of
meals and
medical
treatment.

The cost of providing *meals* may be recovered by the authority from the parent, or other person liable, as a *civil debt* (see *ante*, p. 118) (6 Edw. 7, c. 57, s. 2). As to costs of *medical treatment*, see 7 Edw. 7, c. 43, and 9 Edw. 7, c. 13.

Employment of Children.

Employment
of children.

Everyone commits an OFFENCE who takes into his employment a child—

(a) Who is *under the age of twelve years*. As to limit of age, see 56 & 57 Vict. c. 51; 62 & 63 Vict. c. 13.

OR, (b) who, being *between twelve and fourteen*, has not obtained a certificate of school proficiency, or of previous due attendance at a certified efficient school, *unless* such child is employed, and attending school, in accordance with the *Factory Act* or with some *bye-law* of an education authority under the Education Acts (39 & 40 Vict. c. 79, ss. 5, 24, 48).

PENALTY.—FINE not exceeding 2*l.*, and, in default of distress, imprisonment *without* hard labour, according to scale (p. 111).

A parent or person *in loco parentis* is deemed to take the child into his employment if he employs the child in any labour exercised *by way of trade or for the purposes of gain* (*ib.* s. 47). But a father, who keeps his daughter at home for housework in order that his wife may go out to earn money, is not within these sections (*Mather v. Lawrence*) (*f*). And, where a father, acting under medical advice, allowed (but did not compel) an epileptic child of thirteen years to employ himself to such extent as he was minded in the workshop of the father, it was held that no offence had been committed (*R. v. Austin*) (*g*).

Restrictions
under bye-
laws.

Moreover, it is now provided by later statutes that, as to children *between twelve and fourteen* resident in a

(*e*) *Ante*, p. 8; but 39 & 40 Vict. c. 79, s. 34, is now repealed.

(*f*) [1899] 1 Q. B. 1000; 68 L. J. Q. B. 714; 80 L. T. 600; 74 W. R. 559; 63 J. P. 455.

(*g*) (1907) 96 L. T. 29; 71 J. P. 29; 21 Cox, 347; 5 L. G. R. 126.

school district, a similar OFFENCE is committed if the child is taken into employment before he has reached the standard fixed by the *bye-laws* of that district for the total or partial exemption of children of the like age from the obligation to attend school; or, if the employment prevents his attendance in accordance with such bye-laws (43 & 44 Vict. c. 23, s. 4; 56 & 57 Vict. c. 51; 63 & 64 Vict. c. 53, s. 6). And, where the bye-laws apply to the age of *fourteen*, and make no provision for the *total* exemption from the obligation to attend school upon a child obtaining a certificate of due attendance (providing only for such exemption on his attaining a specified standard), a child of thirteen who has obtained such a certificate of due attendance only cannot lawfully be employed *full time* in a factory or workshop (*Stevenson v. Goldstraw*) (h).

Bye-laws as
to employ-
ment—*contd.*

But, in districts where such bye-laws are still restricted to the age of thirteen years, it would seem that a child between thirteen and fourteen can obtain *total* exemption *either* on passing the prescribed standard, *or* on making 350 attendances after five years of age in not more than two schools during each year for five years, whether consecutive or not. And, in any district, children may be employed as “half-timers,” although the bye-laws contain no provision for “partial” exemption, if such children attend school in accordance with the requirements of s. 68 of the Factory and Workshops Act of 1901 (see *post*, p. 435). The legislature by making provision for the compulsory education of “half-timers,” gave sanction to a scheme of partial exemption.

In the case of children to be employed in agriculture, the authority may, by *bye-law* for any parish, fix *thirteen* as the minimum age for exemption, such children between *eleven* and *thirteen* being only required to make 250 attendances a year if they have reached the standard fixed by the bye-laws for *partial* exemption (62 & 63 Vict. c. 13). Accordingly, if the local authority have made a bye-law under this statute, *total exemption* from school attendance can be claimed in the case of a child, who, having reached

Children
employed in
agriculture.

(h) [1906] 2 K. B. 298; 75 L. J. K. B. 565; 95 L. T. 111; 70 J. P. 340.

the age of *thirteen*, is to be employed in agriculture (*Strong v. Treise*) (*hh*).

Exceptions
and defences.

The fact of the employment of a child does not, however, constitute an offence *under the Education Acts* if there is no public elementary school within two miles of the child's residence; nor if such employment is during holidays, or at such hours as not to interfere with the education of the child; nor if it is exempted by notice of the local authority providing for farming operations at harvest, &c. (39 & 40 Vict. c. 79, s. 9). But distance from school is no longer an excuse in case the education authority provide suitable means of conveyance (7 Edw. 7, c. 43, s. 14).

Liability of
employer's
agent.

The employer may, too, show in answer to the charge that he has *used due diligence to enforce observance of the statute*, and either that the child was employed by his agent or workman without his own knowledge or consent, or that the child was so employed on a false certificate, or on a false representation by the parent that he was of an age at which the employment would not have been unlawful. If this can be established, the *agent or workman* is liable, but not the master (39 & 40 Vict. c. 79, s. 39). A *parent*, too, if privy to the production of such a false certificate, or to the making of such a false representation, would be exposed to a penalty of 2*l.* (*ib.*).

Liability of
the parent.

Proceedings must be taken by the education authority except in case of employment on premises within the purview of factory inspectors or inspectors of mines (*ib.* s. 7).

Summons for
production of
child.

A justice may, by summons, require a *parent or employer* to *produce* before him a *child* required by a bye-law to attend school, and in case the parent or employer fails or refuses to comply with this requirement, he becomes liable to a PENALTY of 1*l.* (36 & 37 Vict. c. 87, s. 24 (iv)).

Order for
examination
of premises
of supposed
employment.

Moreover, on complaint by an officer of the education authority that there is reasonable cause to believe that a child is being employed in contravention of the Act, a justice may, by written authority, empower the officer to enter and examine the place of such supposed employment and the persons found therein. In case the officer is refused admission or obstructed, the person refusing or obstructing becomes liable to a PENALTY of 20*l.* (39 & 40 Vict. c. 79, s. 29).

(*hh*) [1909] 1 K. B. 613; 78 L. J. K. B. 401; 7 L. G. R. 411; 100 L. T. 310; 25 T. L. R. 214; 73 J. P. 105.

It may be added that the forgery or falsification of a certificate under the Education Acts is punishable *summarily* by *three months'* imprisonment with hard labour (36 & 37 Vict. c. 86, s. 25; 39 & 40 Vict. c. 79, s. 37). As to the substitution of a *fine* for imprisonment, see *ante*, p. 106.

Forgery, &c.
of certificate.

A parent who produces or is privy to the production of a false or forged certificate is liable to a PENALTY of 2*l.* (39 & 40 Vict. c. 79, s. 39).

As to the *procedure* under the Education Acts, see *ante*, p. 431.

EMPLOYMENT UNDER THE FACTORY ACT.

A child over *twelve* is entitled to *partial* exemption if he has made 300 attendances in not more than two schools during each year for five years, whether consecutive or not (62 & 63 Vict. c. 13, s. 1).

Provisions as
to children
employed in
factories.

There are, accordingly, special provisions as to the employment in *factories or workshops* of children over twelve and under thirteen years of age; and these provisions are also applicable to a child under fourteen, unless the child has reached a fixed standard of education, or has completed a certain amount of school attendance (1 Edw. 7, c. 22, s. 71). Indeed, to secure TOTAL exemption, with liberty to work "full" time, the attainment of a prescribed standard of education may, apparently, be made an absolutely necessary condition by means of *bye-laws*, see *ante*, p. 433.

"Half-
timers."

As to the compulsory attendance of a "half-timer" it is provided that:

The *parent* must cause such a child (if employed in a factory or workshop) to attend some recognized efficient school, which may be selected by the parent, as follows, viz.:—

(a) If employed in a morning or afternoon "set" (in every week during any part of which he is so employed), on each work day for at least one attendance;

(β) If employed on the "alternate day" system, on each work day preceding each day of employment for at least two attendances (*ib.* ss. 68, 72).

If the *parent* neglect this duty, a PENALTY is incurred of not exceeding 1*l.* for each offence, recoverable by *distress*, Penalty on
parent.

“Half-
timers”
—*contd.*

and, in default, imprisonment, *without* hard labour, according to scale (p. 111; *ib.* s. 138).

If the child is *employed* contrary to these provisions, the parent is, moreover, liable to a fine of 1*l.* for each offence, unless the offence was committed without his consent, connivance, or wilful default (*ib.*).

As to the *procedure* under the Factory Act, see *post*, p. 455.

If a child of twelve has obtained a certificate of due attendance, he may lawfully be employed as a *half-timer* in a factory or workshop, although the *bye-laws* of the district make no provision for the *partial* exemption of children from the obligation to attend school (*Stevenson v. Craig*) (*i.*). But cf. *Stevenson v. Goldstraw* (*j.*) as to cases of *total* exemption.

A child who has not attended school for all the attendances required must not be employed in the following week until he has attended school for the deficient number of attendances (*ib.* s. 68 (*ii.*)). And the *occupier of the factory* or workshop must obtain each week from the school teacher a certificate of the child's attendance (*ib.* s. 69).

Penalty on
occupier of
factory.

If these conditions are not observed, the *occupier* of the factory or workshop becomes liable in respect of each child to the following—

PENALTY.—FINE, for a first offence, not exceeding 3*l.*, or if the offence was committed in the night, 5*l.*, and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111; *ib.* s. 137).

Special
exceptions.

The child is not to be required to attend school on Saturday or any holiday or half-holiday allowed under the Act in the factory. The non-attendance of the child is, moreover, to be excused on every day on which he is certified by the teacher to have been prevented from attending “by sickness or other unavoidable cause,” or when the school is temporarily closed. There is also provision made for attendance at a school temporarily approved by an inspector, although not a “recognized efficient school” within s. 72 (*ib.* s. 68 (*i.*)).

As to the restriction under the Employment of Children Act, 1903, see *ante*, p. 368.

(*i.*) [1906] 2 K. B. 298; 75 L. J. K. B. 565; 95 L. T. 111; 70 J. P. 340.

(*j.*) *Ante*, p. 433.

EMBEZZLEMENT AND FALSIFICATION OF ACCOUNTS.

If anyone who is a *clerk or servant*, or is employed for the purpose or in the capacity of a clerk or servant, *fraudulently embezzles* any chattel, money, or valuable security which is delivered to, or received, or taken into possession by him *for, or in the name of, or on the account of* his master or employer, he is deemed to have *feloniously stolen* the same, and to have committed the offence commonly described as "embezzlement." [Penal servitude for fourteen years.] (24 & 25 Vict. c. 96, s. 68.)

Embezzlement by a clerk or servant.

Form of Information, *post*, p. 1223.

If the value of the property charged as having been the subject of the embezzlement does *not exceed* 2*l.*, and the accused consent, he may be tried summarily, unless he is proved to have been previously convicted on indictment. If the amount *exceed* 2*l.*, the accused cannot be dealt with summarily if he is over sixteen years of age, unless the justices think fit to give him an opportunity of pleading guilty and he does so plead. In case the accused is *between fourteen and sixteen* years of age, he may, if he consent, be dealt with summarily, *whatever be the amount embezzled*; and, if he is under *fourteen* years of age, he may in all cases be dealt with summarily, unless his parent or guardian object (see *ante*, pp. 134—138).

Summary jurisdiction.

The trial may take place (*a*) where the money or article was *received* (provided the defendant were bound to remit the money, &c., to his employer from such place, or were bound thence to notify its receipt), or (*β*) where it was *appropriated*, or (*γ*) where the offender *denied* its receipt or furnished a false and fraudulent account as to its receipt (*R. v. Rogers*) (*k*).

Venue.

It will be observed that the accused must have committed the act during his engagement as *clerk or servant* to an employer, although the property embezzled need not necessarily have been received by him in the discharge of his ordinary duties as such clerk or servant. It may have been received by him without authority, as, *e.g.*, if a drayman sent out to deliver goods were to accept from a customer payment of an account due to his (the drayman's) employer. But the property must have been

Ingredients of the offence.

(*k*) (1877) 3 Q. B. D. 28; 47 L. J. M. C. 11; 37 L. T. 473.

received "for, or in the name of, or on the account of" the master; so that where a bargeman, who had been sent with a cargo and told by his master to bring the barge back empty, improperly received a cargo for part of the return journey and appropriated the money paid for freight, it was held that he could not be convicted of embezzlement, as the money paid to him did not properly belong to his master (*R. v. Cullum*) (*l*).

Clerk or
servant.

It is often not easy to determine whether the accused was really a "clerk or servant" or merely an "agent," in which latter case he would not be within the section (*ante*, p. 242). There are numerous authorities upon the point, but the question is really one of *fact*, to be determined by the tribunal before whom the accused is tried, and much, of course, depends upon the exact circumstances proved to exist in each particular instance (*R. v. Negus*) (*m*). We may, however, mention that the nature of remuneration, *i.e.*, wages or commission, is by no means conclusive. The best test is to ascertain whether the accused was controlled by orders from the prosecutor, or whether he could act as a free agent. A principal may instruct his "agent" *what* to do, but a master may further direct his "clerk or servant" precisely *when and how* to do it (*R. v. Walker*) (*n*). It has been held that a director of a limited company, who was also employed as a servant to collect money for the company, was liable to be convicted of embezzling such money as a clerk or servant (*R. v. Stuart*) (*o*).

Property must
be received
from a third
person.

Again, the property must have been received *from some third person*, upon account of the master, and intercepted before it actually came into the master's possession; as, *e.g.*, where money is paid to a shopman by one of his master's customers, or even by one of his own fellow-servants (*R. v. Masters*) (*p*). So that a clerk or servant who makes away with property which he finds on the premises, or which his master himself has

(*l*) (1873) L. R. 2 C. C. R. 28; 42 L. J. M. C. 64; 28 L. T. 571.

(*m*) (1873) L. R. 2 C. C. R. 34; 42 L. J. M. C. 62; 28 L. T. 646; 37 J. P. 469.

(*n*) (1858) 27 L. J. M. C. 207; 8 Cox, 1; D. & B. 600.

(*o*) [1894] 1 Q. B. 310; 63 L. J. M. C. 63; 70 L. T. 44; 42 W. R. 303; 58 J. P. 299.

(*p*) (1849) 18 L. J. M. C. 2; 3 Cox, 178; 1 Den. C. C. 332.

entrusted to his keeping, or which has already come into his master's possession (as, *e.g.*, if the shopman had placed the money in the till in the ordinary course before seeking to appropriate it), is guilty of simple *larceny* or larceny as a clerk or servant—not of embezzlement.

It may be added that, under 31 & 32 Vict. c. 116 (which deals with misappropriations by members of a co-partnership or by one of two or more beneficial owners), a man may be convicted of embezzling the property of an illegally constituted club of which he is a member; for, although the club has no legal existence as an association, the members may have a legal existence as beneficial owners of the property of the club (*R. v. Tankard* (q); see further, *post*, p. 656, as to embezzlement by co-partners and co-owners).

Embezzling
property of
illegal club.

A *fraudulent intention*, moreover, is of the essence of the offence, and must be distinctly proved. It is to be observed, however, that while, in order to constitute the offence of larceny, it is necessary in almost all cases that the *animus furandi* should have existed at the moment when the property was taken; yet, in embezzlement, which is a crime arising out of confidential relationship, and a criminal breach of trust, the dishonest intention need not have accompanied the first receipt of the property embezzled. It may have arisen at any time during which the property happened to be under the control of the guilty person and before its receipt into the possession of his master.

Fraudulent
intention
must be
proved.

Where the charge of embezzlement arises out of an alleged non-accounting for moneys received from time to time in the ordinary routine of business, the deficit may possibly have been the result of accident, carelessness, or indifferent book-keeping; and, therefore, in order to establish a criminal charge, as distinguished from a mere civil liability to account, the magistrates must be satisfied that there was some intention to do wrong. Such an intention may often be deduced from the fact that the accused has made false entries in his books, has denied the receipt of money which it can be shown was actually paid to him, or has endeavoured to abscond; but guilt

(q) [1894] 1 Q. B. 548; 63 L. J. M. C. 61; 70 L. T. 42; 42 W. R. 350; 58 J. P. 300.

Claim of right
to retain.

must not, of course, be *necessarily* inferred from the existence of one or even more of such damaging circumstances. And it seems that a charge of embezzlement cannot be sustained if the accused, when duly rendering his accounts, frankly and freely admits the appropriation, and alleges a right (no matter how unsubstantial such allegation may appear) to withhold and retain the money or property in respect of which the charge is made (*R. v. Norman* (r); and see *R. v. Creed* (s)). It is presumed, however, that such cases must not be acted upon as laying down a *rule of law*, but rather as affording illustrations of circumstances which render it difficult to infer an intention to defraud.

Charge must
relate to
specific sums,
but evidence
may be given
of other
defalcations.

Not more than *three* distinct charges of embezzlement (and those within a period of six months) may be alleged in one indictment. But if the accused were bound to render an account periodically—say, every week—he might be charged in one count with embezzling a portion of the week's takings as a gross sum, and it might be shown in evidence that any number of smaller sums had been embezzled, making up, in the aggregate, the amount alleged in the particular count of the indictment; though, if he were bound to account for each item separately as he received it, the receipt of only three such items should be charged (*R. v. Balls*) (t). Evidence, moreover, must be given to show that the accused received some *specific* sum or sums on behalf of his employer, and converted the whole or some portion to his own use. It will not be sufficient simply to establish a *general deficiency* in his accounts; for, though it is not necessary to prove the embezzlement of the *exact* amount alleged, yet there can be no conviction on evidence of a deficiency which points simply to an embezzlement of *either* goods or money (*R. v. Clarke*) (u). At the same time, facts showing systematic irregularities, all in the defendant's favour, even though these irregularities may themselves amount to acts of embezzlement, may be proved against the accused; the rule being, that evidence

(r) (1833) 1 C. & M. 501.

(s) (1843) 1 C. & K. 63.

(t) (1871) L. R. 1 C. C. R. 328; 40 L. J. M. C. 148; 24 L. T. 760.

(u) (1905) 69 J. P. 150.

tending to show guilt of criminal acts other than those charged is admissible upon the issue whether the acts charged were designed or accidental, or to rebut a defence otherwise open to the accused; that is to say, in the case of embezzlement, to disprove the suggestion of accident (cf. *Makin v. Att.-Gen. for New South Wales*) (x). Indeed, in one case three charges of embezzlement were preferred in the same indictment, the first relating to the receipt by the accused of money for freight not paid over and not accounted for; the second and the third relating to certain alleged fraudulent dealing on his part with steamboat tickets. The prisoner was acquitted on the third charge but convicted on the others; and it was held that the jury were entitled, in determining his guilt or innocence upon any one of the charges, to take into consideration the evidence given in support of others, notwithstanding his acquittal upon one of such others (*R. v. Stephens*) (y).

Upon the trial of any person indicted for embezzlement, if it be found that the property was taken in such manner as to amount in law to larceny, the prisoner may be convicted and punished for the latter offence, and *vice versa* (24 & 25 Vict. c. 96, s. 72).

Accused may be convicted of larceny.

If anyone who is in the *public service of the Crown*, or is a constable or other person employed in the police of any place, and entrusted by virtue of such employment with the receipt, custody, management, or control of any chattel, money, or valuable security, *embezzles* such chattel, money, or valuable security, or *fraudulently applies or disposes of it* to his own use or for any purpose except for the public service, he is deemed to have feloniously stolen the same from the Crown. [Penal servitude for fourteen years.] (24 & 25 Vict. c. 96, s. 70.)

Embezzlement by servant of the Crown or police officer.

This offence cannot, in case of an adult, be tried summarily.

As to EMBEZZLEMENT by "CO-PARTNERS," see title LARCENY (*post*, p. 656); and as to MALVERSATION by "FACTORS AND AGENTS," see *ante*, p. 243.

(x) [1894] A. C. 57; 69 L. T. 778; 58 J. P. 148.

(y) (1888) 58 L. T. 776; 52 J. P. 823; 16 Cox, 387.

Falsification of Accounts.

Falsification of accounts by officials, clerks, and servants.

Any officer, clerk or servant, or person employed as such, or acting in such capacity, who wilfully and with intent to defraud, destroys, alters, mutilates, or falsifies any book, paper, valuable security, or account which belongs to or is in the possession of his employer, or is in his own possession for or on behalf of his employer; or who wilfully and with intent to defraud makes or concurs in making any false entry therein; or who omits or alters, or concurs in omitting or altering, any material particular from or in such book, paper, valuable security, or account, is guilty of a *misdemeanour*. [Penal servitude for seven years.] (38 & 39 Vict. c. 24, s. 1.) In the final clause of the section the words are "in any such book, or any document or account," but the second *any* was inserted *per incuriam* (*R. v. Palin*) (z).

This offence cannot, in case of an adult, be tried summarily.

Nature of the offence.

"One thing to be kept before a jury is whether the conduct of the accused was possibly consistent with innocence" (per *Wills, J.*, in *R. v. Drewett*) (a). A correct entry of "balance in hand" as shown by the accounts does not become a false entry because the money is not in fact "in hand" (*R. v. Williams*) (b). In one case, the defendant, engaged in a branch shop at Paris, sent to his employers in London slips which purported to show receipts of money in Paris. Knowing that these slips would be used to make entries in a book in London, he fraudulently omitted items therefrom, and it was held that he "omitted" items from the book in London (*R. v. Oliphant*) (c). "I can draw no distinction," said *Alverstone, C.J.*, "between sending by letter and telephoning, and coming direct to London and giving direct instructions there." But *Kennedy, J.*, doubted whether "when the result of a communication is that a wrong entry will be made in a book, the person has omitted or concurred in omitting a material particular from such

(z) [1906] 1 K. B. 7; 75 L. J. K. B. 15; 69 J. P. 423.

(a) (1905) 69 J. P. 37; 21 T. L. R. 164.

(b) (1899) 79 L. T. 739; 63 J. P. 103.

(c) [1905] 2 K. B. 67; 74 L. J. K. B. 591; 69 J. P. 230.

book"; and *Channell*, J., said, in terms: "I do not think that a man who sends a wrong return to his employer and knows his employer will keep his books accordingly, thereby falsifies his employer's books . . . I think to justify a conviction the defendant must have something to do with the keeping of the books."

Falsification
of accounts—
contd.

The falsification of a *mechanical contrivance* for recording an account—e.g., a taximeter—is the falsification of an "account," and the driver of a taxi-cab belonging to a company is a "servant" within the statute (*R. v. Solomons*) (cc).

EMPLOYERS AND WORKMEN ACT, 1875

(38 & 39 Vict. c. 90).

A dispute between an employer and his workman (as hereinafter defined) may be determined by a court of summary jurisdiction if it arise out of or be incidental to the relation between them, and the amount claimed does not exceed 10*l.*

The court acts as a court of civil jurisdiction, and may—
(a) Order payment of any sum (not exceeding 10*l.* exclusive of costs) as wages, damages, or otherwise.

Power of the
court.

(b) Adjust and set off all claims and counterclaims arising out of the service contract, and direct payment of any balance due not exceeding the 10*l.* limit. But where the claim is by a child, young person, or woman subject to the Factory Act, for wages which have actually accrued due (though, perhaps, not immediately payable), the employer cannot set off more than the damage in fact sustained by him on the ground of forfeiture arising from absence or leaving without notice.

Cf. Keates v. Lewis, &c., Collieries,
December
14th, 1909,
74 J. P. 38.

Cf. post,
p. 455.

(c) Rescind any contract between the employer and the workman on such terms as may appear just, either as to the apportionment of wages or sums due under the contract, or as to the payment of wages or damages or other sums due.

Form, p. 1132.

(d) With the consent of the plaintiff, accept security from the defendant (if he be willing to give it) for the due performance of his contract instead of

Form, p. 1133.

(cc) [1909] 2 K. B. 980; 79 L. J. K. B. 8; 101 L. T. 496; 25 T. L. R. 747.

Power of the
court—*contd.*

awarding damages. But the court must not require security to an amount over 10*l.* (see Form in Appendix, p. 1133; 38 & 39 Vict. c. 90, ss. 3, 4, 11).

The parties are, of course, competent and compellable witnesses (*ante*, p. 170).

The jurisdiction of justices to entertain a claim in respect of fines, &c., made by employers against a workman is not ousted by reason of the agreement of service being one to which s. 1 of the Truck Act of 1896 applies (*Buxton Lime Co. v. Howe*) (*d*). Cf. *post*, p. 911.

A workman, engaged for a term certain, having left his employment and by his conduct intimated an intention finally and absolutely to break his contract, the employers recovered 10*l.* damages in respect of a *portion* of the period of his absence. It was held that the jurisdiction of the magistrate was thereby exhausted and that he could not, in subsequent proceedings, give further damages in respect of a *further period* of absence which had expired prior to the commencement of the original proceedings (*James v. Evans & Co.*) (*e*).

The master does not lose the right to sue a workman for breach of contract by continuing the workman in his employ (*Wynnstay Collieries v. Edwards*) (*f*).

To whom the
Act extends.

The Act applies whether the workman is or is not an infant; but, where the contract of service is made with an *infant*, it must be remembered that the employer has no means of enforcing it if its terms are such that it cannot be regarded as beneficial to the infant (*ante*, p. 270). Moreover, as any judgment for damages can only be enforced as a judgment within the Debtors Act, 1869, such a judgment *against* an infant would appear to be of little value.

The Act does not apply to ordinary domestic servants, nor to “menials,” *i.e.*, persons who form part of the household establishment of their master, as, *e.g.*, a groom, or a gardener, or even, under certain circumstances, a huntsman (*Nicol v. Greaves*) (*g*).

(*d*) [1900] 2 Q. B. 232; 69 L. J. Q. B. 498; 82 L. T. 422; 48 W. R. 472; 64 J. P. 503.

(*e*) [1897] 2 Q. B. 180; 66 L. J. Q. B. 742; 45 W. R. 654; 61 J. P. 631.

(*f*) (1898) 79 L. T. 398; 62 J. P. 823.

(*g*) (1864) 33 L. J. C. P. 259; 17 C. B. N. S. 27; 10 L. T. 531.

A potman at an inn is a domestic or menial servant (*Pearce v. Lansdowne*) (*h*).

The expression "workman" includes a labourer, servant in husbandry, journeyman, artificer, handicraftsman, miner, or person otherwise engaged in *manual labour*; and the Act extends to seamen and apprentices to the sea service (*ante*, p. 397; and cf. the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60, s. 226)). It is not easy to reconcile the authorities bearing upon the point, but it may be stated that, although the manual labour may be of a very light character, yet its performance must form a substantial, if not the principal, part of the duties to be discharged. Thus, a designer of patterns may be a "workman"; but the driver of a tramcar is not, nor is the conductor of an omnibus (*Morgan v. London General Omnibus Co.*) (*i*). So, too, it has been held that a grocer's assistant is not a workman, although he may be called upon, not infrequently, to lift considerable weights (*Bound v. Lawrence*) (*k*). Nor is a goods guard (*Hunt v. G. N. Ry.*) (*l*). But the driver of a motor-omnibus, who is supplied with tools to effect necessary repairs during the journey, appears to be a "workman" (*Smith v. Associated Omnibus Co.*) (*m*). The definition of "workman" includes, moreover, a sempstress and ironer (*Maynard v. Peter Robinson*) (*n*); but not a Nottingham "lace clipper," who is not bound to execute any part of the work herself (*Squire v. Midland Lace Co.*) (*o*).

Meaning of
"workman."

The contract, which must be a contract to serve, or personally to execute specific work or labour, may be oral or in writing; though, if it were a contract not to be completely performed by either party within one year, it would, we think, probably be held invalid unless in writing, by reason of the Statute of Frauds (*ib.* s. 10).

The contract
to serve or
work.

The contract of service itself need not be stamped (Stamp Act, 1891, Schedule "Agreement").

(*h*) (1893) 62 L. J. Q. B. 441; 69 L. T. 316; 57 J. P. 760.

(*i*) (1884) 12 Q. B. D. 201; 51 L. T. 213; 48 J. P. 503.

(*k*) [1892] 1 Q. B. 226; 61 L. J. M. C. 21; 65 L. T. 844; 40 W. R. 1; 56 J. P. 118.

(*l*) [1891] 1 Q. B. 601; 60 L. J. Q. B. 216; 64 L. T. 418.

(*m*) [1907] 1 K. B. 916; 71 J. P. 239.

(*n*) (1903) 89 L. T. 136.

(*o*) [1905] 2 K. B. 448; 74 L. J. K. B. 614; 93 L. T. 29; 53 W. R. 653; 69 J. P. 257. Cited *post*, p. 907.

The Act would not apply to a contract with an ordinary contractor who undertakes to execute work by the hands of others; but a man, who employs assistants to aid in the performance of a contract, may nevertheless be a "workman" if he himself undertakes to engage personally in the labour incidental to its performance (*Grainger v. Aynsley*) (p). As to when a workman employed in a mine by an independent contractor can be regarded as a "workman" in the employ of the colliery owners, reference may be made to *Fitzpatrick v. Evans* (q).

Rights of parties as to determination of service.

In the absence of any special agreement, if a servant leaves or is properly dismissed *without notice*, he is only entitled to such wages as have actually accrued due and not to any remuneration for a broken week or month, as the case may be; but it would, of course, be otherwise if the servant were paid by the hour or by piecework, *and* there was no hiring or agreement to serve by the week or the month or other fixed period. If, however, the man was *hired* by the week, &c., he could not recover wages for the broken week even although he were paid by the hour or by piecework (cf. *Saunders v. Whittle*) (r). As to women and children in *factories*, see p. 443.

An employer cannot discharge his workman *without notice* on the ground that the latter has been for a considerable period absent from his work by reason of illness; and this was so held even where the illness was the direct consequence of the servant's own misconduct (*K. v. R.* (s); *Patten v. Wood* (t)).

Whether a single act of forgetfulness on the part of the workman is of such a character as to amount to "negligence" justifying his dismissal without notice is a question of *fact* for the justices to decide (*Baster v. London and County Printing Works*) (u).

Meaning of "dispute."

The word "dispute" must be understood as meaning any controversy or *claim* under the contract—the summary jurisdiction not existing merely *by consent* of the

(p) (1880) 6 Q. B. D. 182; 50 L. J. M. C. 51.

(q) [1902] 1 K. B. 505; 71 L. J. K. B. 302; 86 L. T. 141; 50 W. R. 290.

(r) (1876) 40 J. P. 136; 24 W. R. 406.

(s) (1878) 42 J. P. 264.

(t) (1887) 51 J. P. 549.

(u) [1899] 1 Q. B. 901; 68 L. J. Q. B. 622; 80 L. T. 757; 63 J. P. 439.

parties (*Clemson v. Hubbard*) (x); and it is not confined to strictly actionable claims such as would constitute legal causes of action in a civil court (*Charles v. Plymouth Waterworks*) (y). Moreover, the dispute may have arisen at any time within *six years* prior to the commencement of proceedings, as the six months' limit, applicable to matters heard before courts of summary jurisdiction, does not seem to apply to disputes arising under the provisions of this statute (*ib.*). P. 1004.

Proceedings must be taken in the district in which the defendant or one of the defendants dwelt or carried on business, or was employed, at the time the cause of action arose, or in which he or one of them happens to be at the time of the entry of the action; and the same proceedings are to be had, and the same forms used as upon a claim for a "civil debt" under the Summary Jurisdiction Acts (38 & 39 Vict. c. 90, s. 9; see Appendix, p. 1130, and Forms, p. 1116). Procedure.
P. 1130.

The summons, however, which must be served *four* clear days at least before the hearing, may be served, not only in the manner provided by the Summary Jurisdiction Acts, but also by leaving it with *an adult person at the office or place of business* or employment of the defendant or one of the defendants (Appendix, p. 1130).

No warrant must issue for apprehending any person (other than an apprentice) for failing to answer a complaint in any proceeding under the Act (38 & 39 Vict. c. 90, s. 9).

As to notice of intention to rely on a set-off, and as to claims by plaintiffs claiming upon common circumstances, see rr. 3—8; and as to application for new trial, see r. 9 (Appendix, pp. 1130—1134). P. 1131.

Payment may be ordered to be made by instalments, and may be enforced by distress (upon such goods as might be taken under an execution issued by a county court) after previous service of the order (*ante*, pp. 118—120); but no order of commitment can be made against an *apprentice* until he has been *personally* served with the judgment summons (see r. 2, APPENDIX, p. 1131). P. 1132.
As to the fees, see APPENDIX, p. 1134.

As to APPRENTICES, see *ante*, pp. 265—270.

(x) (1876) 1 Ex. D. 179; 45 L. J. M. C. 69; 40 J. P. 725.

(y) (1891) 60 L. J. M. C. 22; 64 L. T. 466; 39 W. R. 123; 55 J. P. 469.

EXCISE.

Summary
Jurisdiction
Acts apply as
to costs, &c.

By the Summary Jurisdiction Act, 1879 (s. 53), the ordinary incidents of summary jurisdiction are made applicable to all summary proceedings under the statutes relating to inland revenue or the customs (APPENDIX, p. 1054). But where the sum adjudged by conviction to be paid exceeds 50*l.*, the period of imprisonment imposed by justices in respect of non-payment of such sum, or in respect of default of a sufficient distress to satisfy such sum, may exceed *three months* but must not exceed *six months* (*ib.*). The section empowers the court to give *costs* in a proceeding under *any* statute relating to the revenue of the Crown (under the control of the Commissioners of Inland Revenue or Customs) to which the Crown or someone on the behalf of the Crown is a party (*Thomas v. Pritchard*)(*z*).

Information,
evidence, &c.

The information must be laid by order of the commissioners, and in the name of an officer or the Attorney-General, except in case of proceedings on immediate arrest, or authorized proceedings by a peace officer (53 & 54 Vict. c. 21, s. 21); and it must be laid *within six months* after the commission of the offence or the seizure of the goods alleged to be forfeited (11 & 12 Vict. c. 118, s. 3). As to *venue*, see 7 & 8 Geo. 4, c. 53, s. 65, which confers jurisdiction where the offence was committed, the defendant found, or the goods seized. It would seem that the summons may still be served at the place of *business* of the defendant, as provided by 4 & 5 Will. 4, c. 51, s. 19. A person authorized by the commissioners may conduct proceedings before justices although the prosecution be not in his name (53 & 54 Vict. c. 21, s. 27); and the authority may be a "general" authority, *i.e.*, not relating to the specific proceedings (see *R. v. Turner*, *post*, p. 502). Notices, regulations and minutes purporting to be signed by a secretary or assistant secretary to the commissioners by their order are presumed to be so signed, and may be proved *prima facie* by the simple production before the court of a copy so signed (*ib.* s. 24). Indeed, the mere allegation in an information that the commissioners have ordered the prosecution has been held to be

Procedure.

As to Local
Taxation
Licences,
see *Order in
Council*,
Oct. 19th,
1908, *par. iv.*

(*z*) [1903] 1 K. B. 209; 72 L. J. K. B. 23; 87 L. T. 688; 51 W. R. 58; 67 J. P. 71.

sufficient proof of such order (*Dyer v. Tulley*) (a). On a first conviction the justices may mitigate the penalty at their discretion; but, on a second conviction for the same offence, they cannot mitigate the penalty to less than one-fourth (cf. *ante*, p. 105). Any further mitigation lies with the commissioners. A conviction for keeping a carriage without a licence, following a conviction in a *previous* year for keeping a carriage without a licence for that year, is a *second* conviction for the "same offence" (*Phillips v. Stevens*) (b). Mitigation of penalty.

APPEAL lies to quarter sessions not only against a conviction but also against an *acquittal* (7 & 8 Geo. 4, c. 53, ss. 82, 83). And as to the procedure on appeal, see *ante*, p. 153—158. Appeal.

Penalties and forfeitures go to the Crown; *see* cf. *ante*, p. 418.

EXPLOSIVES.

EXPLOSIVES ACT, 1875 (38 VICT. c. 17).

Upon every local authority is imposed the duty of carrying into effect, within their jurisdiction, the powers vested in them under this Act (s. 69). The local authorities are the councils of cities and the larger boroughs, and elsewhere the county councils, who may, if so minded, delegate their powers to (*inter alios*) justices in petty sessions (Local Government Act, 1888, ss. 7, 38, 39 (iii.). 28 (ii.)).

All explosives are for the purpose of the Act divided into seven classes, viz. :—

1. Gunpowder, ordinarily so called.
 2. Nitrate mixture (including pyrolithe, &c.).
 3. Nitro-compound (nitro-glycerine, dynamite, gun-cotton, &c.).
 4. Chlorate mixture (chiefly blasting powder).
 5. Fulminates of various kinds.
 6. Ammunition (in three divisions).
 7. Firework composition and manufactured fireworks
- (Orders in Council, August 5th, 1875, and December

(a) [1894] 2 Q. B. 794; 63 L. J. M. C. 272; 43 W. R. 61; 58 J. P. 656.

(b) (1898) 79 L. T. 280; 62 J. P. 789.

12th, 1891; and see further, as to *acetylene* and *picrates*, Orders in Council of May 15th, 1900, March 27th, 1905, and February 16th, 1906).

Gunpowder
STORES.

If the statutory requirements have been fulfilled, STORES for gunpowder may be kept upon *licence* from the local authority, valid only for the person named, limiting the quantity of powder authorized to be kept, and renewable annually (38 Vict. c. 17, ss. 15—20). Not more than two tons may be held in any such store, and numerous rules are to be observed, including the providing of working clothes without pockets, &c. Subject to certain provisions, similar licences may be obtained for storing “mixed explosives,” *i.e.*, (with some exceptions) explosives other than gunpowder, whether with or without gunpowder (*ib. s. 39*). (See Orders in Council of November 27th, 1875, February 11th, 1907, and June 28th, 1909.)

Sale of gun-
powder or
other explo-
sives by retail.

Any person desirous of carrying on the *retail sale* of gunpowder, or any other explosive, must *register* his name with the local authority. No licence is required, and the person need simply state whether he intends to keep gunpowder only, or “mixed explosives,” which includes the whole series mentioned above except the fulminates and “unauthorized” explosives. As regards this registration, which is renewable annually, the local authority have no discretion. If registered for *gunpowder* only, the maximum amount allowed to be kept on the premises is 200lbs.: or, indeed, not more than 50lbs., if stored in a dwelling-house, or building not exclusively appropriated for the purpose and detached from a dwelling-house (unless under the protection of a fireproof safe, in which case 100lbs. may be kept). If registered for *mixed explosives*, the weight allowed varies according to the character of the receptacle as well as the quality of the explosive. Thus, *e.g.*, in case *fireworks* ONLY are kept, there may be 200lbs. if kept in “Mode A.” as it is called, *i.e.*, in a building, fireproof safe, or excavation of the prescribed construction and wholly detached from a dwelling-house; but 50lbs. only if kept in “Mode B,” *i.e.*, in a substantial receptacle inside a dwelling-house, or inside any such building as is not itself qualified for the keeping of explosives in “Mode A.” If kept in *both* “Modes,” the *aggregate* weight must not exceed the

maximum weight allowed under "Mode A." Fireworks not liable to explode violently and known as "shop goods" may be kept in double quantity, *e.g.*, in "Mode B" there may be kept 50lbs. of "shop goods" and 25lbs. of other fireworks (ss. 21, 22, 39; and see Orders in Council of October 26th, 1896, and May 11th, 1906).

As regards the RETAIL SALE of *gunpowder and fireworks*, the following rules are laid down, and are in most places rigorously enforced. Under s. 32 all GUNPOWDER *over 1LB.* in weight, when publicly *exposed for sale or sold*, must be *in a substantial bag, canister, or receptacle*, made and closed so as to prevent escape, and *marked* with the word "Gunpowder." No loose powder, *over 1lb.* in weight, may therefore be kept open for sale in any shop. By Order in Council, No. 9, all explosives of the FIREWORK class, *exceeding 5LBS.* in weight, must be stored in a "receptacle" exclusively appropriated to that purpose. The situation of this receptacle is left to the proprietor, and it need not bear any mark or label so long as its contents are not exposed for public sale. But no fireworks *over 5LBS.* in weight may be *so exposed or sold*, unless securely packed, and labelled "Fireworks—Explosive" (ss. 32, 39; Order in Council, No. 9). Not more than 5lbs. weight of loose fireworks must therefore ever be exhibited on the counter, &c.; and it follows that the store receptacle, if allowed to stand in the shop, which should never be the case, must upon no account be opened there, in order to take out articles required by customers. Beyond compliance with these rules, every registered person is bound to take every reasonable precaution for the prevention of accident by fire or explosion (s. 23). He is bound also to show, upon demand, to the officer of the local authority, every place in which explosives in his possession are kept, and to allow the officer to take samples, &c. (s. 69).

Rules as to
RETAIL SALE
of gunpowder
and fireworks.

The maximum quantity of GUNPOWDER which may be kept FOR PRIVATE USE is 30LBS., *or*, if made up in safety, *i.e.*, breech-loading, cartridges, 150LBS. In lieu or reduction of the above, certain other explosives may be substituted. No explosive, however, may be kept for private use which is not authorized to be manufactured, or imported, for general sale; nor any fulminates contained in class 5, *supra*. But 5LBS. of FIREWORKS may be

Gunpowder,
fireworks, &c.,
for PRIVATE
USE.

Fireworks for private use. kept, or, indeed, *an unlimited quantity* if intended for *immediate use* and not kept more than fourteen days, provided such fireworks be stored in a safe place (see Order in Council, No. 12, April 20th, 1883).

Power of search, arrest, &c. Very extensive powers are given by the Act to Government inspectors, who are bound to see that all regulations are effectually carried out (s. 55). Provision is also made for giving notice of accidents (s. 63), and for the search of any place where there is reason to believe that any offence has been or is being committed, as well as for the seizure of explosives by the authorities (ss. 73 *et seq.*). Any person found committing an offence against the Act, tending to cause an explosion or fire in or about any factory, magazine, store, railway, &c., may be apprehended without warrant (s. 78).

OFFENCES. OFFENCES under this Act may be dealt with summarily, or, if the justices think fit, the accused may be committed for trial. But if there is *power to impose* a PENALTY exceeding 100*l.* (exclusive of forfeiture) the accused may, at the outset, *demand* trial by jury, and the court must then treat the offence as an *indictable* offence (ss. 91, 92, 94, 102). APPEAL lies to quarter sessions if the sum adjudged to be paid (including costs and forfeiture) exceeds 20*l.* (s. 93).

The Act provides for the following amongst other

Offences.

Offences as to licensing and registration.

- (a) Making gunpowder, or other explosive, at an unlicensed place (*c*) (100*l.* a day) (ss. 4, 39).
- (b) Keeping explosives, except upon licensed or registered premises; unless for private use in quantities limited as above (2*s.* per lb.) (s. 5).
- (c) Occupier breaking general rules as to stores (10*l.*; and second offence, 10*l.* a day) (s. 17); see *ante*, p. 450.
- (d) Occupier breaking general rules as to registered premises, *e.g.*, as to the maximum amounts allowed to be kept, &c. (2*s.* per lb. in respect of which, or being on the premises in which, the offence was committed) (s. 22); see *ante*, p. 450.
- (e) Selling or exposing explosives for sale, otherwise than as required by s. 32 as above explained (2*l.*) (s. 32); see *ante*, p. 451.

Retail sale of gunpowder and fireworks.

(*c*) N.B.—But see “Penalty,” p. 453.

- (f) Breach of rules as to the packing of explosives for conveyance (20*l.*) (s. 33). OFFENCES —*contd.*
- (g) Occupier of stores or registered premises refusing to admit or obstructing officer of local authority (20*l.*) (s. 69).
- (h) Person occupying or having control of premises failing to admit or obstructing officer authorized to search premises (50*l.*) (s. 73).
- (i) Hawking or selling gunpowder or explosives upon any street, thoroughfare, or public place (2*l.*) (s. 30). Hawking gunpowder or explosives.
- (j) Throwing, casting, or firing any fireworks in or upon any highway, street, thoroughfare, or public place (5*l.*) (s. 80). Throwing fireworks in highway, &c.
- (k) Selling gunpowder or explosives to a child apparently under thirteen years of age (5*l.*) (ss. 31, 39). Selling to a child.
- (l) Trespassing upon any factory, magazine, or store, or on adjoining land (5*l.*) (s. 77).
- (m) Person, other than occupier or person employed, found committing an act tending to cause explosion or fire (50*l.*) (s. 77).

All explosives found are liable to forfeiture in case of offences (a), (b), (c), (d), (e), (f), (h), or (i). Forfeiture.

Where a court has power to forfeit any explosive, &c., it may, instead of ordering such forfeiture, impose an equivalent pecuniary penalty (s. 89).

Where an occupier, warehouseman, carrier, &c., is liable in respect of an act committed by another person, such other person may be fined 20*l.*; and if the occupier, &c., can show that he has done all in his power to secure observance of the law, he will be exempt (s. 87). Occupier, &c., when exempt.

PENALTY.—The maximum pecuniary penalties are given above, but a court of summary jurisdiction *cannot impose* a penalty exceeding 100*l.* (exclusive of costs and forfeiture), or imprisonment for more than ONE MONTH. The penalties are recoverable by *distress*; and, if the prosecution is by a Government inspector, are payable to the Exchequer. As to the power of the court to make an ORDER prohibiting the doing of an act for which a person has been twice convicted, see s. 91. PENALTY.

If the offence was, in the opinion of the court, calculated to endanger or cause serious injury to any person, or to cause a dangerous accident, and was *wilfully* Wilful and dangerous acts or defaults.

committed by the act, negligence, or default of the accused, the court may, *in lieu of a fine*, impose imprisonment for not more than ONE MONTH, with or without hard labour. If the accused be tried on *indictment*, the imprisonment, in lieu of a fine, may extend to six months (ss. 79, 91).

EXPLOSIVE SUBSTANCES ACT, 1883 (46 & 47 VICT. C. 3).

Causing
dangerous
explosion.

Everyone is guilty of *felony* who unlawfully and maliciously causes by any *explosive substance* an explosion of a nature likely to *endanger life*, or to cause *serious injury to property*, whether any injury to person or property has been actually caused or not. [Penal servitude for life.] (s. 2.)

This offence is not triable except at the assizes.

Conspiracy,
&c., to cause
dangerous
explosion.

Everyone is guilty of *felony* who, within or (being a subject of the King) without the King's dominions, unlawfully and maliciously—

(a) Does any *act with intent to cause* by an explosive substance, or *conspires to cause* by an explosive substance, an *explosion* in the United Kingdom, of a nature likely to endanger life or to cause serious injury to property; or

(β) *Makes, or has in his possession*, or under his control, any *explosive substance with intent*, by means thereof, to endanger life or cause serious injury to property in the United Kingdom; or to enable any other persons by means thereof to endanger life or cause serious injury to property in the United Kingdom;

whether any explosion takes place or not, and whether any injury to person or property has been actually caused or not. [Penal servitude for twenty years.] (s. 3.)

Unlawful
manufacture
or possession
of explosives.

Everyone is guilty of *felony* who *makes*, or knowingly has in his possession, or under his control any *explosive substance*, under such circumstances as to give rise to a reasonable suspicion that he is *not making it*, or does not have it in his possession, or under his control, *for a lawful object*, unless he can show that he made it, or had it in his possession or under his control, *for a lawful object*. [Penal servitude for fourteen years.] (s. 4.)

Meaning of
"explosive
substance."

The expression "explosive" substance includes any materials for making explosives; and also any apparatus,

machine, implement or materials used or intended to be used or adapted for causing explosion with any explosive substance (s. 9).

Where the Attorney-General has reasonable ground for suspecting that an offence under this Act has been committed in any place, he may order an inquiry by a magistrate of that place, although no person may be charged before him with the commission of such offence (s. 6). As to asking incriminating questions, see s. 6 (ii.).

Inquiry *ex parte*.

If a person is charged before a justice with an offence under this Act, the latter must not take any steps in the matter (except to secure the safe custody of the prisoner by remand or otherwise) until the consent of the Attorney-General is given to further proceedings (s. 7).

Consent of Attorney-General necessary.

If a justice has conducted an inquiry under s. 6, he must not act as a committing magistrate.

Accessories, who in any manner procure, counsel, aid, or abet a crime, are punishable as principals (s. 5).

Accessories

The crime is to be deemed to have been committed where the accused was apprehended or is in custody (s. 7 (iii.)).

Venue.

The powers of *search*, *arrest*, &c., under the Act of 1875 apply (*ante*, p. 452).

FACTORY AND WORKSHOP ACTS, 1901 and 1907.

These Acts contain detailed provision for the regulation of textile and non-textile factories and workshops, and as to the conditions of employment therein. There is special provision for *children* (under fourteen who are not "full-timers," see *ante*, p. 433), *young persons* under eighteen years of age, and *women*.

The information must be laid within *three months* after the offence is known to the inspector, or, in case of an inquest, *two months* from its conclusion; but not more than *six months* from the commission of the offence. An information laid on *July 22nd*, charging that a flywheel was not securely fenced on *July 1st*, is not out of time simply because the inspector saw the same wheel unfenced in *March* and at earlier dates (*Verney v. Mark Fletcher & Sons, Ltd.*) (cc); and see *R. v. Taylor*, *post*,

Procedure and evidence.

(cc) [1909] 1 K. B. 444; 78 L. J. K. B. 292; 100 L. T. 348; 25 T. L. R. 218; 73 J. P. 131.

Service of
summons.

p. 462. It is sufficient to state the name of the ostensible occupier or the title of the firm by which the occupier is usually known (1 Edw. 7, c. 22, s. 146). A summons, order or other document may be served by post or by delivery at the residence of the person to be served; or (where he is the *owner* of a factory, &c.) by delivering the same or a true copy thereof to his *agent*; or (where he is the *occupier*) by delivering the same or a copy to his *agent* or to some person in the factory or workshop (*ib.* s. 148). A person actually committing an offence for which an occupier is liable may be fined (*ib.* s. 140); and the occupier may exempt himself on conviction of the actual offender (cf. *Rogers v. Barlow* (*d*); 1 Edw. 7, c. 22, s. 141). Appeal lies, see *post*, p. 464.

"Employed."

Anyone found in the workrooms (except at meal times, or when all the machinery is stopped, or bringing food between 4 and 5 p.m.) is to be deemed *prima facie* to have been "then employed" in the factory or workshop (*ib.* s. 147 (i.)). This enactment does not apply to a *domestic* factory or workshop, nor to rooms in which no machinery is used or manufacturing process carried on (*ib.*). See further, *post*, p. 460.

As to *disqualification* of justices, see *ante*, p. 17.

Inspector
may conduct
proceedings.

An inspector, if so authorized under the hand of the Secretary of State, may prosecute, conduct or defend before justices any information, complaint, or other proceeding arising under the Act or in the discharge of his duty as inspector (*ib.* s. 120): cf. *Tyler v. Ferris* (*dd*).

Proof of age.

When a child or young person appears to the court to be of the age alleged, it lies on the defendant to prove that the child or young person is not of that age (*ib.* s. 147 (ii.)). A written declaration by the certifying surgeon that he has personally examined a person employed and believes him to be under the age set forth in the declaration is admissible in evidence of the age (*ib.*).

Meaning of
"Factory,"
"Workshop,"
&c.

"TEXTILE FACTORY" means any premises wherein, or within the close or curtilage of which, *steam, water, or other mechanical power* (*ejusdem generis* with steam or water power, not, *e.g.*, hand power (*Wilmott v. Paton* (*e*))) is used to move or work any machinery employed in

(*d*) (1906) 70 J. P. 214; 94 L. T. 519.

(*dd*) *Ante*, p. 38.

(*e*) [1902] 1 K. B. 237; 71 L. J. K. B. 1; 66 J. P. 197.

preparing, &c., or in *any process incident to the manufacture of, cotton, wool, hair, silk, flax, hemp, jute, tow, china-grass, cocoa-nut fibre or other like material*, either separately or mixed together or mixed with any other material, or any fabric made thereof. But print works, bleaching and dyeing works, lace warehouses, paper mills, flax scutch mills, rope works and hat works are excluded from the definition (*ib.* s. 149).

"NON-TEXTILE FACTORY" means (a) certain specified works; (β) certain other specified works in case steam, water, or other *mechanical power* is employed *in aid of* the manufacturing process; and (γ) *any premises* where *such mechanical power* is employed and where *manual labour is exercised* by way of *trade or for purposes of gain* in order (i.) to make any article or part of any article, or (ii.) to alter, repair, ornament, or furnish any article, or (iii.) to adapt any article for sale (*ib.* 6th schedule). By 7 Edw. 7, c. 39, there are included in the class (β): "*Laundries* carried on by way of trade or for the purpose of gain, or carried on as ancillary to another business or incidentally to the purposes of any public institution"; and special provision is made as to the conditions of employment therein (see ss. 2, 3, 4 of the Act last cited).

"WORKSHOP" means (a) certain specified works when so used as not to be "factories," *i.e.*, without the employment of mechanical power; and (β) *any place* (to or over which the employer has the right of access or control, but which is not a factory) where *manual labour* is exercised by way of *trade or for purposes of gain* in order to (i.) make any article or part of any article, or (ii.) alter, repair, ornament or finish any article, or (iii.) adapt any article for sale (1 Edw. 7, c. 22, s. 149).

The last-cited Act is, by 7 Edw. 7, c. 39, extended to certain INSTITUTIONS, carried on for *charitable or reformatory purposes*, where manual labour is exercised to make, alter, &c., articles not intended for the use of the institution, notwithstanding that the work is not carried on by way of trade or for purposes of gain (7 Edw. 7, c. 39, s. 5).

Application
of Acts to
certain
institutions.

In a tripe manufactory, a boiler was supplied by pressure of steam, and steam was used to heat the water in the coppers where the tripe was prepared and adapted for sale. This use of steam power was held to constitute the premises

Illustrative
cases.

Illustrative
cases—*contd.*

a non-textile factory (*Doswell v. Cowell*) (f). Where, however, machinery for crushing mortar in connection with some new buildings was erected within the precincts of a factory, but was used *solely for a purpose other than the manufacturing process carried on in the factory*, it was held not to be within the Acts (*Lewis v. Gilbertson*) (g). Stores used for aërating and bottling beer by mechanical power and the pressure of gas were found to be used for the purpose of *adapting an article for sale* (*Hoare v. Truman & Co.*) (h). But premises, used for washing the bottles by the aid of mechanical power and filling them *by manual labour only*, were held not to be a factory, as the engine was not used *in aid of the process of bottling* (*Law v. Graham*) (i). Again, a movable engine, which could be connected with a mill fixed in a farmyard, did not constitute a factory, as it was used for grinding meal to feed the stock and *not for the purpose of gain* (*Nash v. Hollinshead*) (j). This decision was followed in *Curtis v. Shinner* (k), where an owner of fishing boats occupied a warehouse in which he had his nets repaired. A room at the back of a retail florist's shop, where crosses, wreaths and bouquets were arranged with wood and wire, was held to be a *workshop in which articles were made, and adapted for sale*, and in which *manual labour* was exercised (*Hoare v. Green*) (l); but the shaking and sorting of rags is *not an adapting for sale* (*Paterson v. Hunt*) (ll).

Occupier not
keeping place
in conformity
with the Act.

If a factory or workshop is *not kept in conformity with the Act* the occupier (or in case of a "tenement" factory, for most purposes, the owner) is liable to a

PENALTY.—*Fine* not exceeding 10*l.*, and, in default of distress, imprisonment *without* hard labour, according to scale (p. 111). On a *second* conviction in relation to a factory within *two years* for the *same* offence, the fine must not be less than 1*l.* for each offence (1 Edw. 7, c. 22, s. 135). As to *proof of conviction*, see *ib.* s. 147 (iv.) and *ante*, p. 106.

(f) (1906) 95 L. T. 38; 22 T. L. R. 628.

(g) (1904) 91 L. T. 377; 68 J. P. 323.

(h) (1902) 71 L. J. K. B. 380; 86 L. T. 417; 50 W. R. 396; 66 J. P. 342.

(i) [1901] 2 K. B. 327; 70 L. J. K. B. 608; 65 J. P. 501.

(j) [1901] 1 K. B. 700; 70 L. J. K. B. 571; 65 J. P. 357.

(k) (1906) 95 L. T. 31; 70 J. P. 272; 22 T. L. R. 448.

(l) [1907] 2 K. B. 315; 76 L. J. K. B. 730; 71 J. P. 341.

(ll) (1909) 101 L. T. 571; 73 J. P. 496.

In lieu of, or in addition to, the fine, the court may ORDER the place to be brought into conformity with the Act within a given time; and the PENALTY for non-compliance within the time fixed or enlarged is 1*l.* per day.

OFFENCES of this class relate to *overcrowding and sanitary conditions, drainage of floors, and sanitary conveniences* (ss. 1, 3, 8, 9); *temperature* (s. 6); *breach of condition as to cleanliness, ventilation or overcrowding*, where occupier has availed himself of *special exemptions* (s. 60); *ventilation* (ss. 7, 74); *modes of escape from fire* (ss. 14, 16); *regulations as to the fencing of dangerous machinery* (s. 10), and as to *self-acting machines* (s. 12); the construction, examination and maintenance of *boilers* (s. 11); *special provisions for certain dangerous trades and employment in wet-spinning* (ss. 75, 76); *regulations as to the grinding of cutlery in a tenement factory* (s. 88); *cleansing, &c., of bakehouses* (ss. 99, 101); *special regulations as to laundries* (7 Edw. 7, c. 39, s. 3). And see the *White Phosphorus Matches Prohibition Act, 1908* (*post*, p. 464).

Place not in conformity with Acts.

The section as to *sanitary conveniences* (1 Edw. 7, c. 22, s. 9) does not apply where s. 22 of the Public Health Acts Amendment Act, 1890, is in force (*cf. post*, p. 817); nor in the administrative county of London, as to which see 54 & 55 Vict. c. 76, s. 38.

The *sanitary* regulations as to overcrowding and as to the cleansing, purification, and removal of nuisances in *workshops, workplaces and domestic factories* are enforced by the *local authority* under 1 Edw. 7, c. 22, s. 2; and see PUBLIC HEALTH, *post*, pp. 817, 836. As to the powers of an "inspector" in relation to sanitary defects remediable by the *local authority*, see *ib.* s. 5.

If satisfied that any part of a factory or workshop is in such a condition that the process or handicraft cannot be carried on without *danger to health, or to life or limb*, the court may by ORDER prohibit the use of the place until the works necessary to remove the danger have been executed (1 Edw. 7, c. 22, s. 18).

Order as to unhealthy or dangerous factory or workshop.

For any contravention of the order, the PENALTY on the *occupier* (or *owner*, in case of a *tenement factory*) is a *fine* not exceeding 2*l.* a day (*ib.* s. 87 (ii.)).

As to the *notification* of accidents, see s. 4 of the NOTICE OF ACCIDENTS ACT, 1906 (6 Edw. 7, c. 53). For

Notice of accidents.

neglect of the provisions of this section the *occupier* is liable to a PENALTY of 10*l.*; and, if the *actual employer* is *not* the occupier, he must report immediately to the latter under a PENALTY of 5*l.*

Order as to dangerous ways, machinery, &c.

If satisfied that any part of the *ways, works, machinery, or plant* (including a steam boiler used to generate steam) is in such a condition that it cannot be used without *danger to life or limb*, the court may by ORDER prohibit its use altogether, or until it is duly repaired. In case of *imminent danger to life* the court or a *justice* may, on application *ex parte*, make an INTERIM ORDER.

For any contravention of the order, the person entitled to control the use of the ways, works, &c., is liable to a PENALTY not exceeding 2*l.* a day (1 Edw. 7, c. 22, s. 17).

Occupier employing child, young person, or woman contrary to the provisions of the Act.

If a person is *employed* in a factory or workshop *contrary to the provisions of the Act*, the occupier is liable to a

PENALTY.—*Fine* of 3*l.* (or, if the offence was committed between 9 p.m. and 6 a.m., 5*l.*) for each person so employed, recoverable by *distress*, and, in default, imprisonment *without* hard labour, according to scale (p. 111). In case of a “domestic” factory or domestic “workshop” the fines are 1*l.* and 2*l.* in lieu of 3*l.* and 5*l.* On a *second* conviction in relation to a *factory* within *two years* for the *same* offence, the *fine* must not be less than 1*l.* for each offence (*ib.* s. 137). As to *proof* of previous conviction, see *ib.* s. 147 (iv.) and *ante*, p. 106.

“Domestic” factory or workshop.

“Domestic factory” and “domestic workshop” mean a place which, though used as a dwelling, is a factory or workshop by reason of the work carried on, and in which no mechanical power is used in aid of the process, “and in which the only persons employed are members of the same family dwelling there” (*ib.* s. 115). For the provisions of the Act in relation to such places, see ss. 111–114.

Meaning of “employed.”

If a woman, young person, or child is not allowed the proper time for meals or absence from work, or, during any part of such times, is, in contravention of the provisions of the Act, employed in a factory or workshop or allowed to remain in any room, such woman, young person, or child is to be deemed to be employed contrary to the provisions of the Act (*ib.* s. 137). The word “employment” is so defined as to cover every kind of work incidental to or connected with the process or

handicraft (*ib.* 152); and it has even been held that, where a young person oiled machinery during a meal hour contrary to orders, for his own amusement, the occupier of the factory was liable (*Prior v. Slaithwaite Spinning Co.*) (*m*). A Scotch decision to the opposite effect does not seem to have been cited.

The class of OFFENCES referred to as amounting to employment contrary to the provisions of the Act relate to employment on self-acting machines (*ib.* s. 12); *cleaning machinery in motion* (s. 13); the hours of *employment in textile factories* (ss. 24, 25); the hours of *employment in non-textile factories and workshops* (ss. 26, 27); special provisions as to *print works and bleaching and dyeing works* (s. 28); *women's workshops* (s. 29); eight hours' employment of women and young persons (s. 30); restrictions on employment inside and outside on same day (s. 31); provisions as to *meal times* (s. 33); *Sunday employment* (s. 34); *holidays* (s. 35); special provisions as to the time and mode of employment of *women, young persons, and children* in various classes of employment (ss. 37, 38, 39, 44, 49, 50, 77, 78); *night work* (ss. 54, 56); *breach of condition* (not relating to cleanliness, ventilation or overcrowding) where occupier has availed himself of *special exemptions* (s. 60); unfitness for employment (ss. 61, 62); employment of young person *under sixteen* without *certificate of fitness or capacity* (ss. 63, 67); hours of employment in *laundries* (7 Edw. 7, c. 39, s. 2).

An occupier of a factory or workshop, or of any place from which work is given out, or any contractor employed by him, becomes liable to a PENALTY of 10*l.* if he causes or allows *wearing apparel* to be made, cleaned, or repaired in a dwelling-house or building occupied therewith whilst any inmate is suffering from *scarlet fever* or *small-pox*. To escape liability the defendant must prove that he was not aware of the illness and could not reasonably have been expected to become aware of it (1 Edw. 7, c. 22, s. 109).

If the ABSTRACT and other *notices* required by the Act are *not affixed* at the entrance of the factory or workshop and in the other prescribed parts of the premises, the

Employment
"contrary to
the provisions
of the Act."
And see s. 69,
ante, p. 435.

Making wear-
ing apparel
where there is
scarlet fever
or small-pox.

Affixing
abstract and
notices.

(*m*) [1898] 1 Q. B. 881; 67 L. J. Q. B. 615; 62 J. P. 358;
W. R. 488

Keeping
general regis-
ter.

occupier (or in case of a “tenement” factory, speaking generally, the *owner*) becomes liable to a PENALTY of 2*l.* (*ib.* ss. 32, 60, 87, 128) ; while, if the GENERAL REGISTER is not kept in the prescribed form, or is not open for inspection by the certifying surgeon, or if required extracts therefrom are not sent to the inspector, the *occupier* becomes liable to a PENALTY of 5*l.* (*ib.* s. 129). An entry made by or on behalf of an *occupier* is, as against him, *prima facie* evidence of the facts stated ; while the failure to make an entry required as to the observance of any provision is *prima facie* evidence that the provision has not been observed (*ib.* s. 129 (ii.)).

Penal com-
pensation
when death
or injury
results from
neglect to
fence, &c., &c

If anyone is killed or dies or suffers bodily injury or injury to health, in consequence of an *occupier's neglect* to observe any provision of the Act or any regulation thereunder, such *occupier* becomes liable to a PENALTY of 100*l.* ; and, in case of a *second* conviction in relation to a *factory* within *two years* for the *same* offence, the fine must not be less than 1*l.* In case of injury to health, the *occupier* will not be liable unless it were caused directly by the neglect ; nor can he be fined if an information for breach of the provision or regulation has been heard and dismissed. The whole or any part of the fine may be applied for the benefit of the injured person, or his family or otherwise, as the Secretary of State may determine (*ib.* s. 136).

The offence created by s. 136 is distinct from that created by s. 135, *i.e.*, not keeping the “factory in conformity with the Act” (*ante*, p. 458), so that, when injury is caused by an unfenced machine, the three months’ limitation will run from the date of the injury and not from the date when the inspector first knew that the machine was unfenced (*R. v. Taylor* (*n*) ; cf. s. 146, *ante*, p. 455).

In a “tenement” factory, the *owner* is liable to compensate for neglect to fence machinery not supplied by the *occupier* (*ib.* s. 87 (i.)) ; and, in certain cases, the *owner of a machine* is made liable instead of the *occupier of the factory* (see s. 142).

REGULA-
TIONS for
dangerous
trades.

The Secretary of State may certify as “dangerous” any *manufacture, machinery, plant, process, or description*

(*n*) [1908] 2 K. B. 237 ; 77 L. J. K. B. 531 ; 72 J. P. 238 ; 98 L. T. 754 ; 21 Cox, 592.

of manual labour, used in factories or workshops, if he be satisfied that it is dangerous or injurious to health or dangerous to life or limb, either generally or in the case of women, children, or any other class (*ib.* s. 79). Thereupon, the Secretary of State may, subject to the provisions of the Act, make REGULATIONS to secure the safety of persons employed (*ib.*). Any breach of the regulations by an occupier, owner or manager is punishable by a PENALTY of 10*l.* and, in case of a continuing offence, by a penalty of 2*l.* for each day the offence continues after conviction.

Penalty for
breach of
regulations.

A contravention or non-compliance by any person other than an occupier, owner, or manager is punishable by a PENALTY of 2*l.*; and the occupier is also liable to a fine of 10*l.* unless he proves that he has taken "all reasonable means" (by publishing and enforcing the regulations) to prevent a breach (*ib.* s. 85).

Legible printed copies of the regulations must be kept posted up in conspicuous places in the factory, &c., where they may be conveniently read; and a printed copy must be given by the occupier to any person affected on his or her application.

Publication
of regula-
tions.

An occupier who fails to post up or give copies is liable to a FINE of 10*l.* (*ib.* s. 86). Pulling down or defacing regulations or notices is punishable by a FINE of 5*l.* (*ib.*).

Forging or uttering false certificates, making false entries or declarations, personating anyone named in a certificate, falsely pretending to be an inspector, or conniving at such proceedings, amounts to an OFFENCE punishable by a fine of 20*l.* or by imprisonment, with hard labour, for THREE MONTHS (1 Edw. 7, c. 22, s. 139). As to the power of an inspector to require persons to be examined and to sign declarations, see s. 119 (f).

FORGERY of
certificates,
false entries,
&c.

It is an OFFENCE punishable by a fine of 5*l.* to obstruct an inspector by wilfully delaying him, failing to comply with his requisitions, failing to produce certificates, &c., or concealing a child, young person or woman. If the obstruction occur in a factory or workshop, the occupier is liable to a fine of 5*l.* (or if between 9 p.m. and 6 a.m., 20*l.*). In a "domestic" factory or workshop, the fines are 1*l.* and 5*l.* in lieu of 5*l.* and 20*l.* On a second offence

OBSTRU-
TION
of inspector.

- in relation to a *factory* within two years, for the *same* offence, the minimum fine is 1*l.* (*ib.* s. 119).
- Penalties. Except in the case of penal compensation awarded to an injured person under s. 136, fines are paid into the Exchequer (*ib.* s. 144 (iii.)).
- Appeal. Appeal against a conviction or order lies to the quarter sessions (*ib.* s. 145). As to *certiorari*, see s. 146 (iv.). And see as to "Half Timers," EDUCATION (*ante*, p. 435); and for further restrictions on the employment of *children*, see CHILDREN, *ante*, pp. 368, 375.
- WHITE PHOS-
PHORUS
MATCHES
PROHIBITION
ACT, 1908. It has been made unlawful to manufacture, sell, or import *matches* made of *white phosphorus*; though the prohibition of *sale* and of *possession* for purposes of sale (under penalty of *forfeiture* by ORDER of a court of summary jurisdiction) does not take effect, as to *retail* dealers, until *January 1st*, 1911. Any factory in which matches are so manufactured is deemed to be "not kept in conformity with" the Factory Act (cf. *ante*, p. 458); and an occupier is guilty of "obstruction" (*ante*, p. 463) if he refuses to allow an "inspector" to take samples (8 Edw. 7, c. 42, s. 1). The inspector must, if required, divide the sample and give one part to the occupier (*ib.*).

FALSE PRETENCES.

- False pre-
tences. Whosoever *by any false pretence* obtains from any person any *chattel, money, or valuable security with intent to defraud*, is guilty of an *indictable* misdemeanour, with which justices may (if they think fit and the accused consent) deal under certain conditions as to the value of the property, the age of the accused, &c., which are set forth, *ante*, pp. 134—142 (24 & 25 Vict. c. 96, s. 88). The punishment on indictment is penal servitude for five years.
- Form of
Information,
post, p. 1228. Anyone *found committing* the offence may be apprehended by any person without warrant, and carried before a justice (s. 103; and the cases cited *ante*, p. 47).
- The provision creating this offence is extended to cases where the goods, &c., are procured, by means of a false pretence, to be delivered to a *third party* (s. 89); and also to cases in which the *execution of a security* is

obtained by fraud, or a person is induced to affix his own name or that of any person, firm, company, &c., upon any paper, &c., in order that the same may be made into or used as a valuable security (s. 90).

Moreover, the *attempt* to obtain property by false pretences is in itself an indictable misdemeanour.

It must be remembered that, if the accused is tried *summarily*, the court must explain to him the nature of the misdemeanour (cf. *ante*, p. 137); and it is of importance to apprehend clearly the distinction between this offence and one particular phase of larceny, *i.e.*, larceny by means of some fraudulent device or trick. The essential distinction is that in the one case the *property* in the goods, &c., passes to the person practising the fraud; in the other, he merely gets *possession* of the goods. If I fraudulently induce a man to lend me any of his goods, or to entrust them to my keeping, and I then make away with them, that is stealing, in case the proprietor never assented in his mind to my treating them as my own. But if I fraudulently induce him to part with his *ownership* of goods or money, which he thereupon assents to my carrying off and dealing with as my own, that is not larceny; but it may, as we shall presently see, constitute the obtaining of the goods or money by false pretences within the meaning of the statute. Thus, if by falsely representing myself as the servant of a well-known millionaire, I induce a jeweller to permit me to take away jewels *for the approval* of my supposed master, and I then make away with them, that is *theft*; but if, by false representations as to my own position, I fraudulently induce the jeweller to *sell* me the jewels on credit, I then commit the misdemeanour of obtaining the jewels by false pretences. And this would be so, even although, at the time when I made the purchase, I intended to pay for the goods *if and when it should be in my power to do so* (*R. v. Naylor*) (o).

To constitute the crime in question (a) there must be an intentional and specific representation of some pretended *existing fact* (not a mere promise or representation as to the future, unless based upon or involving some existing fact) which the maker knows to be untrue; but

Attempt.

Explanation to be given of "false pretences."

Distinction between false pretences and larceny.

Constituents of the offence.

(o) (1865) L. R. 1 C. C. R. 4; 35 L. J. M. C. 61; 13 L. T. 283; 14 W. R. 58.

Constituents
of the offence
—*contd.*

the pretence need not be made in words—"acts, conduct, or silence" may be enough; (β) the representation must be material to the matter in hand and not too remote; (γ) it must be made with intent to defraud; and (δ) the person to whom it is addressed must in point of fact believe it, and make over property on the strength of it. The *opinion* formed by the person defrauded as to the truth or otherwise of the statement made to him by the prisoner is, therefore, admissible as evidence of his belief in the truth of the false pretence (*R. v. King*) (*p*). There must, of course, be evidence that the accused acted *fraudulently*, as, *e.g.*, if a man sells a brass ring as a gold ring, there must be evidence that he knew the ring was *not* a gold ring (*R. v. Dunleavy* (No. 2)) (*pp*). If the person to whom the representation was addressed was not really deceived by it *or* if no goods, &c., were in fact obtained by the person who perpetrated the fraud, the offence committed would be that of *attempting* to obtain goods, &c., by false pretences (*ante*, p. 164).

The pretence need not be made *directly* to the person from whom the money is obtained. Thus, in one case an officer of a friendly society made *to the secretary* a return of members entitled to sick pay, and wrongfully included the name of a man who was not so entitled. This officer afterwards received, through the *treasurer*, the amount shown by the return, and retained it in discharge of a debt due to him from the man whose name he had fraudulently included in the return. A conviction for making a false pretence *to the treasurer* was upheld (*R. v. Taylor*) (*q*).

"Puffing"
does not
amount to a
false
pretence.

No mere terms of commendation, or the reverse, such as ordinarily pass between buyer and seller, fall within the meaning of the statute. Thus, even where the prisoner fraudulently offered plated spoons in pledge which he falsely pretended were "of the best quality, having as much silver upon them as Elkington's A, with foundations of the best material," and the pawnbroker advanced cash upon the faith of these statements, the majority of the court regarded this as a mere "puff," and quashed

(*p*) [1897] 1 Q. B. 214; 66 L. J. Q. B. 87; 75 L. T. 392; 61 J. P. 329.

(*pp*) (1909) 73 J. P. 56. 1801782

(*q*) (1901) 49 W. R. 671; 65 J. P. 457; 17 T. L. R. 524.

the conviction (*R. v. Bryan*) (*r*). But, of course, if there had been a specific and fraudulent statement as to the quantity of silver contained in the plate, there could have been no doubt as to the propriety of the conviction (*R. v. Ardley*) (*s*). "It must be a question in each case whether what is alleged to be a false pretence is or is not a misrepresentation of a specific fact, material and intended to defraud and which did defraud; or whether it is a mere puffing by which a person ought not to be taken in" (per *Willes, J.*, in *R. v. Bryan*) (*t*).

A familiar instance of false pretences is that of raising money by means of worthless cheques, where the prisoner had either no account at the bank, or no balance and no right to overdraw (cf. *R. v. Hazleton*) (*u*); *R. v. Cosnett*) (*v*).

In order to show guilty knowledge on the part of the prisoner, it may be proved that he had made previous attempts to obtain money by similar false pretences (*R. v. Francis*) (*x*). So, on a charge of obtaining money by means of worthless cheques, evidence of a similar transaction, which had already been given in a trial resulting in the prisoner's acquittal, was held to be admissible (*R. v. Ollis*) (*y*). But such evidence would only be admissible on the issue whether the acts charged were designed or accidental—that is to say, to rebut the defence that there was no intention to defraud. So that, where a man was charged with obtaining money from another person by the false pretence that he had been authorized by a third man to make the application, the fact that the prisoner had on another occasion obtained money from a fourth man by a similar false pretence was held to be irrelevant, on the ground that the fact of the prisoner's knowledge that he had no authority on the one occasion could not be assumed from the fact of his knowledge that he had no authority on the other occasion.

Evidence of other similar offences.

(*r*) (1857) 26 L. J. M. C. 84; 7 Cox, 312.

(*s*) (1871) L. R. 1 C. C. R. 301; 40 L. J. M. C. 85.

(*t*) *Supra*.

(*u*) (1874) L. R. 2 C. C. R. 134; 44 L. J. M. C. 11; 23 W. R. 139.

(*r*) (1901) 84 L. T. 800; 49 W. R. 633; 65 J. P. 472; 20 Cox, 6.

(*x*) (1874) L. R. 2 C. C. R. 128; 43 L. J. M. C. 97; 12 Cox, 612.

(*y*) [1900] 2 Q. B. 758; 69 L. J. Q. B. 918; 83 L. T. 251; 64 J. P. 518.

(*R. v. Holt*) (z). The making of similar false pretences, even at dates *subsequent* to the offence charged, may be given in evidence, if, under the circumstances, it points to a systematic fraud and a connected scheme of dishonesty (*R. v. Rhodes*) (a). Such evidence is admissible where it appears that the pretences were really all connected with one scheme or transaction (*R. v. Smith*) (b).

Meaning of
chattel.

The word "chattel" in the statute relates only to such chattels as were the subject of larceny at common law, so that it is not an offence to obtain, *e.g.*, a dog, by false pretences (*R. v. Robinson*) (c).

Venue.

As to the venue, the trial may take place where the goods were obtained, or where the false pretences were made. Thus, when goods were obtained on credit in England by means of false representations made verbally in Glasgow, the defendant was held to have been rightly convicted in England under s. 11 (xiii.) of the Debtors Act, 1869 (*R. v. Ellis*) (d); and, when the prisoner, in Nottingham, by a letter posted to a French firm, made a false pretence and thereby obtained money which was received by him in Nottingham, he was held to have been rightly indicted in that town (*R. v. Holmes*) (e).

Cf. *ante*,
p. 292 ;
offence (e).

In case of doubt as to whether the offence is larceny or false pretences, the accused should be committed for trial on the latter charge, because, upon the trial of a person indicted for false pretences, he is not entitled to be acquitted although the court may be of opinion that he ought properly to have been indicted for larceny. But a prisoner indicted for larceny cannot be convicted of "false pretences."

Obtaining
credit by
false pre-
tences or
other fraud.

As to the offence (punishable under the Debtors Act, 1869) of obtaining *credit* by false pretences, or by means of *any other fraud*, as, *e.g.*, by ordering and consuming food at an eating-house without being possessed of the

(z) (1860) Bell, C. C. 280 ; 30 L. J. M. C. 11 ; see Stephen's Digest of Evidence, 7th edit. p. 18.

(a) [1899] 1 Q. B. 77 ; 68 L. J. Q. B. 83 ; 47 W. R. 121 ; 79 L. T. 360 ; 62 J. P. 774. Cf. *R. v. Fisher*, [1910] 1 K. B. 149 ; 26 T. L. R. 122.

(b) (1905) 92 L. T. 208 ; 69 J. P. 51.

(c) (1859) 28 L. J. M. C. 58 ; 7 W. R. 203 ; 8 Cox, 115.

(d) [1899] 1 Q. B. 230 ; 68 L. J. Q. B. 103 ; 79 L. T. 532 ; 47 W. R. 188 ; 62 J. P. 838.

(e) (1883) 12 Q. B. D. 23 ; 53 L. J. M. C. 37 ; 32 W. R. 372 ; 47 J. P. 756

means to pay for it, see *BANKRUPTCY* (*ante*, p. 293). Evidence of other similar frauds immediately preceding the offence charged may be relevant as tending to show a system of fraud (*R. v. Wyatt*) (*f*). The offence is not triable summarily if the accused is an adult.

Knowingly making a *false statement* or *false representation* to obtain or continue an OLD AGE PENSION (for oneself or another), or for the purpose of obtaining or continuing it at a rate higher than the appropriate one, is an OFFENCE punishable on summary conviction, with SIX MONTHS' imprisonment with hard labour (8 Edw. 7, c. 40, s. 9 (i.)). The accused must, AT THE OUTSET, be given the OPTION OF TRIAL BY JURY (*ante*, p. 63). As to the imposition of a *fine*, see *ante*, p. 106.

False pretence to obtain OLD AGE PENSION.

If any person knowingly makes any *false statement* or *false representation* to any officer of a labour exchange established under the LABOUR EXCHANGES ACT, 1909, or to any one acting for and for the purposes of any such labour exchange, for the purpose of obtaining employment or procuring workpeople, such person commits an OFFENCE punishable on SUMMARY CONVICTION with a PENALTY not exceeding 10*l.*, recoverable by *distress*, and, in default, imprisonment *without* hard labour, according to scale (p. 111) (9 Edw. 7, c. 7, s. 3).

LABOUR EXCHANGES ACT, 1909.

As to collecting *alms* by means of false pretences, see *VAGRANTS* (*post*, p. 929).

As to frauds by MONEY LENDERS, see 63 & 64 Vict. c. 51, s. 4; *post*, p. 727.

FALSE ALARMS OF FIRE ACT, 1895 (58 & 59 Vict. c. 28).

Any person knowingly giving or causing to be given a *false alarm of fire* to the fire brigade of any town or parish outside the metropolitan area, or to any officer thereof, whether by means of a street fire alarm, statement, message, or otherwise, is liable on conviction before a court of summary jurisdiction to a PENALTY of 20*l.*, recoverable by *distress*, and in default, imprisonment, without hard labour, according to scale (*ante*, p. 111 (s. 1)).

False alarms of fire.

(*f*) [1904] 1 K. B. 188; 73 L. J. K. B. 15; 68 J. P. 31; 20 Cox, 462; 20 T. L. R. 68.

FERTILISERS AND FEEDING STUFFS ACT, 1906 (*f*₂).

Warranties as to fertilisers and feeding stuffs.

Any person, who *sells* for use (*a*) AS A FERTILISER OF THE SOIL, any *imported* article, or any article subjected to *artificial process* in this kingdom, or (*β*) AS FOOD FOR CATTLE OR POULTRY, any article which has been *artificially prepared*, must now give an invoice strictly detailed as required by the statute (6 Edw. 7, c. 27, s. 1 (i.) (ii.)). The statements contained in such invoices, or in any descriptive circulars or advertisements, have effect as a *warranty* by the seller (*ib.* s. 1 (v.)). "Cattle" in this statute means bulls, cows, oxen, heifers, calves, sheep, goats, swine and horses.

Penalties for breach of duty by seller (s. 6).

Offences (s. 6).

Every person who *sells* an article for use as a *fertiliser of the soil* or as *food for cattle or poultry* commits an OFFENCE if he (*ib.* s. 6)—

(*a*) *Fails* without reasonable excuse to *give* the required *invoice*, on or before or as soon as possible after the delivery of the article. [If an invoice is delivered which purports to comply with the statute, the mere fact that it is *incorrect* will not bring the vendor within this clause (*Needham v. Worcestershire C. C.* (*f*₃))]; or

(*β*) *Sells* for use as *food for cattle or poultry* an article containing an ingredient *deleterious* to them, or to which has been added an ingredient *worthless* for feeding purposes and not disclosed at the time of sale; or

(*γ*) *Causes* or *permits* an *invoice* or description to be *false* in any material particular, to the prejudice of the purchaser. It will be no answer, under s. 6, to say that the purchaser having bought for analysis was not prejudiced. It seems to be doubtful whether *mens rea* is a necessary element of offence (*γ*), see *Needham v. Worcestershire C. C.*, *supra*; but, however this may be, it is specially provided that it shall be a sufficient defence, in the case of offence (*γ*), to prove that the seller did not know and could not with

(*f*₂) For regulations and forms as to sampling, limits of error, &c., see Orders of Board of Agriculture, &c. (1906), Nos. 944, 945, 946.

(*f*₃) (1909) 7 L. G. R. 595; 25 T. L. R. 471; 73 J. P. 293; 100 L. T. 901.

reasonable care have ascertained the falsity, or that he purchased with a written warranty or invoice (from a person in the United Kingdom) containing the false statement, and that he sold the article in the state in which it was purchased and without any reason for believing that the statement was false.

In respect of this particular offence (*i.e.* (γ)) it is provided that the prosecution cannot be instituted after *three months* from the date when the invoice was received by the purchaser, nor unless a sample has been taken and certificate given under the Act; but proceedings may be taken either where the invoice or description was given, or where the purchaser resides or carries on business (*ib.* s. 9 (ii)).

Proceedings cannot be taken under this section (*i.e.*, s. 6) *without the consent of the Board of Agriculture, &c.*, given after the obtaining of a certificate by the chief analyst; and, as under the Sale of Food and Drugs Acts, the *summons* must state the name of the prosecutor, give *particulars* of the offences alleged, be accompanied by a copy of any *certificate* of analysis obtained on behalf of the prosecutor, and be made returnable not less than *fourteen days* from the day on which it is served (*ib.* s. 6 (iii.) (iv.)).

PENALTY (without prejudice to any civil liability) Penalty.
not exceeding 20*l.* for a *first* offence, and 50*l.* for a *subsequent* offence: recoverable by *distress*, and, in default imprisonment *without* hard labour according to scale, p. 111 (s. 6 (i)).

If any person *fraudulently* (α) *tampers with any article* so as to procure that a *sample* taken under the Act *does not correctly represent* the article; or (β) *tampers with any sample* taken under the Act, he becomes liable to a Penalties for tampering (s. 7).

PENALTY not exceeding 20*l.*, recoverable by *distress*, and in default imprisonment *without* hard labour, according to scale (p. 111); OR to IMPRISONMENT, *without* hard labour, for a term not exceeding SIX MONTHS (*ib.* s. 7).

The defendant must, AT THE OUTSET, be given the OPTION OF TRIAL BY JURY (*ante*, p. 63).

If the *owner*, or the person entrusted for the time being with the charge or custody, of an article, *sold* or Obstructing official sampler (s. 8).

intended to be sold as a fertiliser of the soil or as food for cattle or poultry, refuses to allow an "official sampler" to take the sample; or, the *purchaser* refuses to give to the "official sampler" the *invoice*, or a copy thereof, or of any prescribed part thereof, he becomes liable to a

PENALTY not exceeding 10*l.*, and, in default of *distress*, imprisonment *without* hard labour according to scale (p. 111).

Persons, in possession solely as *carriers*, have been held, in Ireland, to be persons "entrusted for the time being, etc.," within this section (*Department of Agriculture v. Cork Steam Packet Co.*) (*f*₄).

Procedure.

Except where the consent of the Board of Agriculture, &c., is required, proceedings may be instituted either by the person aggrieved, the council of a county borough, or by any body or association authorized by the Board. Appeal lies to quarter sessions (s. 9).

There is power to appoint an analyst and "samplers" (s. 2); to have a sample of the fertiliser or feeding stuff analysed, if taken within ten days of delivery or of receipt of invoice, whichever is later (s. 3); and there is provision as to the division of the sample into parts, and the production of the analyst's certificate as *prima facie* evidence of the facts therein stated (*ib.*). In a county borough which does not appoint, or concur in appointing, an analyst, the analyst of the county (in which for the purposes of the Local Government Act, 1898, the borough is deemed to be situate) will act (Stat. R. & O., February 29th, 1908).

FISHING.

Offences under the Larceny Act.

As to the power of arrest and procedure under the LARCENY ACT, see *post*, p. 660.

- (a) Everyone commits a misdemeanour who unlawfully and wilfully *takes or destroys any fish* in water running through, or being in, any land *adjoining or belonging to the dwelling-house* of any person who is the owner

Taking fish
in water
adjoining
dwelling-
house.

of such water or has a right of fishery therein (24 & 25 Vict. c. 96, s. 24).

This misdemeanour cannot, in case of an adult, be tried summarily, and is punishable by fine and imprisonment. The word "fish" has been held to include crayfish (*Caygill v. Thwaite*) (g).

But if the fish is taken, &c., or attempted to be taken, &c., *by angling in the daytime, i.e., between the beginning of the last hour before sunrise and the expiration of the first hour after sunset*, the offender must then be tried summarily, and is liable to a PENALTY not exceeding 5*l.*, and, in default of *payment*, imprisonment, with or without hard labour, according to scale (p. 111). If his "tackle" be seized the offender is exempt from further penalty (*post*, p. 474).

Exception as to *angling in the daytime*.

Two lines were laid, one end of the lines being attached to a piece of wood, driven into the ground to make the lines fast. At the other end were hooks baited with worms and a stone to keep the lines under water. The defendants being found taking fish off the hooks and re-baiting, it was held that they were *not* "angling" (*Barnard v. Roberts*) (h).

Meaning of "angling."

(b) Everyone commits an offence, punishable summarily, who unlawfully and wilfully *takes or destroys, or attempts to take or destroy, any fish in water not being such as is above mentioned (i.e., not being water adjoining a dwelling-house) but which is private property, or in which there is a private right of fishery* (24 & 25 Vict. c. 96, s. 24).

Taking fish in private waters *not adjoining dwelling-house*.

PENALTY.—FINE, not exceeding 5*l.*, and forfeiture of the value of the fish taken, recoverable similarly.

If, however, the fish is taken or attempted to be taken in such last-mentioned waters, *by angling in the daytime*, as above defined, the PENALTY which may be imposed on the offender must not exceed 2*l.*, recoverable similarly. If his "tackle" be seized the offender is exempt from further penalty (*vide infra*).

Angling in the daytime in private waters *not adjoining dwelling-house*.

One justice may convict in each of the above cases; but as to the limits of the power of punishment of a single justice, see *ante*, p. 12. There is an appeal to

Conviction by one justice.

(g) (1885) 49 J. P. 614; 33 W. R. 581.

(h) (1907) 96 L. T. 648; 23 T. L. R. 439; 71 J. P. 277.

- quarter sessions if the conviction takes place before a single justice *or* if the sum to be paid exceeds 5*l.* (s. 110).
- Claim of right. As to the defence arising out of a *claim of right*, see *ante*, p. 88. If the claim is of a right to fish as *one of the public*, it should be remembered that: "Where a river is navigable *and* tidal, there the public may fish unless some 'general fishery' created before Magna Charta can be established. But where the river is non-tidal, the public have no right and can have no right to fish" (*Pearce v. Scotcher* (*i*); and see *Re Brancaster Fishery* (*k*); *Mussett v. Burch* (*l*); *Hudson v. McRae* (*m*)).
- Proof of right of fishery. A private right of fishery, if granted, must be *granted by deed*. Unless expressly reserved in the lease, the right of fishing in a river, which flows through the demised land, passes to the tenant (*Jones v. Davies*) (*n*). As to rights by *immemorial custom*, see *Goodman v. Saltash* (*o*).
- Seizure of fishing tackle. The owner of the ground, water, or fishery, his servant, or any person authorized by him, may demand from an offender the rods, nets, or other fishing tackle in his possession; and, in case they are not immediately delivered up, they may be seized by force. But if the offender is simply "angling in the daytime," he will, after the seizure of the tackle, be exempt from penalty (s. 25).

Offences under other Acts.

- The general close time for SALMON is between *September 1st* and *February 1st*, both inclusive, but for rod fishing between *November 1st* and *February 1st*; putts and putchers between *September 1st* and *May 1st*. For TROUT or CHAR the close season is *October 2nd* to *February 1st*, both inclusive. If the river lies in a "fishery district," the time would be subject to alteration, within certain limits, by the board of conservators, who are empowered to make bye-laws in respect of certain specified matters,
- Bye-laws as to close season.
36 & 37 Vict.
c. 71, ss. 39,
45; 39 & 40
Vict. c. 19,
s. 4.
- (*i*) (1882) 9 Q. B. D. 162; 46 L. T. 342; 46 J. P. 248.
(*k*) (1875) 39 J. P. 372.
(*l*) (1876) 35 L. T. 486; 40 J. P. 758.
(*m*) (1863) 33 L. J. M. C. 65; 9 L. T. 68; 4 B. & S. 585.
(*n*) (1902) 86 L. T. 447; 66 J. P. 439; 20 Cox, 184.
(*o*) (1883) 7 App. Cas. 633; 52 L. J. Q. B. 193; 47 J. P. 276; 31 W. R. 294.

imposing penalties not exceeding 5*l.* Such bye-laws may be proved by production of a copy purporting to have been confirmed and duly sealed, together with a newspaper containing the notice.

- (c) Everyone commits an offence who fishes for, catches, or attempts to catch or kill, salmon during the close season, whether fish be actually taken or not (24 & 25 Vict. c. 109, s. 17).

Fishing for
SALMON in
close season.

PENALTY.—FINE not exceeding 5*l.*, and 2*l.* for each fish caught, and, in default of *distress*, imprisonment *without* hard labour, according to scale (p. 111). Also forfeiture of any fish caught, and of the nets, &c., used in committing the offence (28 & 29 Vict. c. 121, s. 58).

There is also a *weekly* close time throughout the year, *i.e.* (unless the time is varied by conservators), from noon on Saturday to 6 a.m. on Monday, and no one may during such period fish for or catch salmon *otherwise than by rod and line*; the PENALTIES being 5*l.*, and 1*l.* for each fish; also forfeiture of the fish and nets (24 & 25 Vict. c. 109, s. 21). As to *putts and putchers*, see the section.

Weekly close
season.

The Act of 1879 contains special and specific legislation making *September 1st* to *May 1st* the close time for taking *by putts and putchers*, so that a bye-law prescribing that the close time for a district “for all modes of salmon fishing, except with rod and line, shall commence on August 16th” cannot operate to prevent fishing with putchers on August 22nd (*Prosser v. Cadogan*) (p).

- (d) Everyone commits an offence who wilfully kills any trout or char during the close season in waters frequented by trout or char (28 & 29 Vict. c. 121, s. 64; 41 & 42 Vict. c. 39, s. 5; 47 & 48 Vict. c. 11, s. 4).

Fishing for
TROUT or
CHAR in close
season.

PENALTY.—FINE, not exceeding 2*l.*, recoverable as in (c), and forfeiture of the fish.

- (e) Everyone commits an offence who, during the *close season* (*March 15th* to *June 15th*, both days inclusive) fishes for, catches, or attempts to catch or kill, *any freshwater fish* in any river, lake, tributary, stream, or other water connected or communicating with such river (41 & 42 Vict. c. 39, s. 11 (ii.) (iii.)).

Fishing for
FRESHWATER
FISH in the
close season.

Exemptions
from penalty.

This prohibition does not, however, extend to prevent (a) The owner of a several or private fishery (where trout, char, or grayling are specially preserved) destroying freshwater fish other than grayling; or (β) Angling in a several fishery with the leave of the owner thereof, or in a public fishery under the jurisdiction of conservators with their leave; or (γ) Taking freshwater fish for scientific purposes in a several fishery with the leave of the owner thereof, or in a public fishery, unless the taking be contrary to a bye-law of the conservators; or (δ) Taking freshwater fish for use as bait in a several fishery with the leave of the owner thereof, or in a public fishery, unless the taking be contrary to a bye-law of the conservators (*ib.* s. 11 (iii.); 47 & 48 Vict. c. 11, s. 5; and see *ib.* s. 8).

Buying
FRESHWATER
FISH in close
season.

So, too, everyone commits a like offence who, during the same period, *buys, sells,* or exposes for sale, or has in his possession for sale any *freshwater fish* (41 & 42 Vict. c. 39, s. 11 (iv.)).

" Freshwater
fish."

" Freshwater fish " in s. 11 of this Act of 1878 seems to include all kinds of such fish (other than pollan, trout, char or eels), except those which migrate to and from the sea; but the exemption of eels does not authorize *the angling for* eels in the close season (49 & 50 Vict. c. 2, s. 1).

Penalty.

PENALTY.—FINE, not exceeding 2*l.*, and in default of distress, imprisonment, *without* hard labour, according to scale (p. 111). Also forfeiture of the fish, and (if the justices think fit) the instruments used in catching it. There is, too, provision for increasing the penalty to 5*l.* in case of a second offence. And the using of nets or other devices to catch *eels* (except baskets constructed and used as prescribed) is prohibited, *in a salmon river*, between *January 1st* and *June 24th*, inclusive, under a PENALTY of 2*l.* a day; while a like penalty is incurred by placing in any inland water any device to catch or obstruct fish descending the stream (36 & 37 Vict. c. 71, s. 15; 39 & 40 Vict. c. 34, s. 1).

Traps for
eels in salmon
river.

Catching fish
descending
stream.

Buying, &c.,
TROUT AND
CHAR in close
season.

(f) It is an offence to buy, sell, or have in possession for sale any *trout or char* between *October 2nd* and *February 1st*, both inclusive (36 & 37 Vict. c. 71, s. 20).

PENALTY.—Not exceeding 1*l.* for each fish, recoverable similarly, and forfeiture.

- (g) So it is an offence to buy, sell, or have in possession for sale any *salmon* (unless cured, or lawfully caught within the exceptions prescribed by the Act) between *September 3rd* and *February 1st*, both inclusive (*ib. s. 19*). Buying, &c.,
SALMON in
close season.

PENALTY, not exceeding 2*l.* for each fish or part thereof, recoverable similarly; and forfeiture.

As to the marking of packages containing salmon, trout or char, consigned by common or other carriers during the close season, see 55 & 56 Vict. c. 50, s. 3.

- (h) It is an offence to fish in a fishery district, with rod and line, for salmon, trout or char, without a licence, issued by the conservators of the fishery district (28 & 29 Vict. c. 121, s. 35; 36 & 37 Vict. c. 71, s. 21; 41 & 42 Vict. c. 39, s. 7). Fishing (*with
rod and line*)
for salmon,
trout or char
without
licence, in
a fishery
district.

Fishing for bait with no intention of catching salmon, trout or char, is not an offence (*Marshall v. Richardson*)(*q*). The waters included in a fishery district must be tributaries of or communicate with a river—not, *e.g.*, an artificial reservoir (*Stead v. Nicholas*)(*r*). But a bay in the course of a mill race may be part of a “tributary” (*Moses v. Iggo*)(*s*).

PENALTY.—A FINE of not less than double the amount required to be paid for the licence, and not exceeding 5*l.*

- (i) A person found fishing must, when required by a licensee, conservator, water-bailiff, or duly authorized constable, produce his licence or give a reasonable excuse for not doing so, under a PENALTY of 1*l.* (28 & 29 Vict. c. 121, s. 37). Failure to
produce
licence.

- (k) It is an offence, within a fishery district, to use any fishing weir, putt, net, &c., or other instrument or device, not being a rod and line, to catch salmon, trout or char without a proper licence (*ib. s. 36*). Using *nets,
&c.*, to catch
salmon, trout
or char, *with-
out* licence.

PENALTY.—A FINE of not less than double the amount required for the licence, and not exceeding 20*l.*

For taking such fish in a fishery district by using instruments, devices, or any means other than properly licensed weirs, dams, &c., the PENALTY is 5*l.*, and 1*l.* for Taking fish
by improper
means.

(g) (1889) 58 L. J. M. C. 45; 60 L. T. 608.

(r) [1901] 2 K. B. 163; 65 J. P. 484.

(s) [1906] 1 K. B. 516; 75 L. J. K. B. 331; 94 L. T. 548 70
J. P. 251.

each salmon, &c., caught (36 & 37 Vict. c. 71, s. 22; 41 & 42 Vict. c. 39, s. 7). The section does not apply to gaffs or landing nets used as auxiliaries by the holder of a rod licence; nor would it apply to picking up a fish left dead on the beach by the receding tide (*Gazard v. Cooke*) (t). But it has been held that the taking of a dying trout, by hand, from a stream which had been poisoned was an offence within the section, although there was no evidence to connect the defendant with the poisoning of the stream (*Stead v. Tillotson*) (u).

Fishing with,
or dealing in,
roe.

- (l) *Fish-roe* may not be used for the purpose of fishing; and anyone who buys, sells, or exposes for sale, or even has in possession (without satisfactory excuse), the *roe of salmon, trout or char*, commits an offence, unless it be for artificial propagation, &c., with the consent of the conservators (24 & 25 Vict. c. 109, s. 9; 28 & 29 Vict. c. 121, s. 64).

PENALTY.—A FINE not exceeding 2*l.* and forfeiture.

Unclean or
unseasonable
salmon, &c.

- (m) It is an offence wilfully to take, kill or injure, or attempt to take, or to buy, sell, expose for sale, or have in possession, *unclean or unseasonable salmon, trout or char*, unless it be so taken, &c., for artificial propagation or other scientific purpose, with the consent of the conservators (24 & 25 Vict. c. 109, s. 14; 36 & 37 Vict. c. 71, s. 18).

PENALTY.—FINE, not exceeding 5*l.*, and 1*l.* for each fish; and forfeiture of fish.

These sections do not apply where fish is taken accidentally and forthwith returned to the water uninjured.

Exportation
of salmon.

- (n) It is an offence to export from the United Kingdom, or to enter for exportation to parts beyond seas, salmon which is unclean or unseasonable or was caught during the close season (26 & 27 Vict. c. 10, s. 3). As to *onus* of proof, see the section and 33 & 34 Vict. c. 33, s. 3.

PENALTY.—FINE, not exceeding 5*l.* for each salmon, and forfeiture of the fish.

And as to irregularities in exportation between September 3rd and April 30th, see 28 & 29 Vict. c. 121, s. 65; and 33 & 34 Vict. c. 33, s. 3.

(t) (1891) 55 J. P. 102.

(u) (1900) 69 L. J. Q. B. 240; 48 W. R. 431; 64 J. P. 343.

- (o) It is an offence to use a *light*, otter lath, gaff, spear, snare, or other like instrument to catch salmon, trout or char; or even to have in possession a light, or such an instrument, intending to catch or kill such fish.

Using lights, snares, &c., to catch salmon, &c.

The PENALTY is 5*l.*, and forfeiture of the instruments (24 & 25 Vict. c. 109, s. 8; 36 & 37 Vict. c. 71, s. 18; 41 & 42 Vict. c. 39, s. 5).

- (p) It is an offence to catch or destroy fish in a public fishery (or in any water within the limits of the Acts) by the use of *dynamite* or other explosive substance (40 & 41 Vict. c. 65, s. 2; 41 & 42 Vict. c. 39, s. 12).

Using dynamite to destroy fish.

PENALTY.—FINE, not exceeding 20*l.*, and, in default of distress, imprisonment, *without* hard labour, according to scale (p. 111);

Or, IMPRISONMENT, with or without hard labour, for not more than TWO MONTHS.

- (q) It is, too, an offence unlawfully and maliciously to put *poison*, *lime*, or other *noxious material*, in any water frequented by freshwater fish with intent to destroy them (47 Vict. c. 11, s. 7). “Freshwater fish” here means any fish permanently or temporarily in fresh water, except salmon. As to *salmon*, see 24 & 25 Vict. c. 109, ss. 5, 6 (and see *post*, p. 641).

Using poison to destroy fish.

PENALTY, as in the last offence.

In respect of offences under the Acts from 1861 to 1873, the penalty for a *second* offence must not be less than half the maximum, nor for a *third* offence less than the maximum; but it is not imperative on justices to inflict a greater penalty than 50*s.* for a *second*, or 5*l.* for a *third* offence. Where an offender has been convicted *twice* of any of the offences (c), (l), (m), or (o), he may on a *third* conviction for any of such offences be *imprisoned* for SIX MONTHS with hard labour, and must, therefore, be given the option of trial by jury. As to the procedure to be adopted, see *ante*, p. 65. On being convicted for a second time of an offence against the Acts of 1861 and 1865, a licensee forfeits his licence (28 & 29 Vict. c. 121, ss. 56, 57). As to appropriation of penalties, see 36 & 37 Vict. c. 71, s. 62; and as to the certificate of a justices’ clerk being used in evidence as a minute of conviction, *ib.* s. 11.

Penalties for second or subsequent offences.

Water-bailiffs have a power of search (36 & 37 Vict. c. 71, s. 36), and a justice may, upon information on

Search warrant.

oath, issue a search warrant (24 & 25 Vict. c. 109, s. 34; 41 & 42 Vict. c. 39, s. 9).

Appeal.

APPEAL lies to quarter sessions (28 & 29 Vict. c. 121, s. 66; 36 & 37 Vict. c. 71, s. 4; 47 & 48 Vict. c. 11, s. 6).

As to institution of prosecutions by water-bailiff, cf. *ante*, p. 39; and as to conservator acting as justice, see *ante*, p. 19.

It would be impossible, in a work of this scope, to deal, in detail, with all the provisions of the Acts relating to fisheries; reference may be made to "Oke's Synopsis," 14th edit. p. 288.

AS TO SEA FISHERIES, see 31 & 32 Vict. c. 45; 40 & 41 Vict. c. 42; 46 & 47 Vict. c. 22; 57 & 58 Vict. c. 26; 9 Edw. 7, c. 8.

FORCIBLE ENTRY.

Forcible
entry and
detainer.

It is an *indictable* misdemeanour for any person, without lawful authority, to make an entry into any lands and tenements otherwise than in a peaceable manner. It is immaterial that such person has a *right* of entry; at any rate, if the possession of the occupier was *lawfully* acquired.

The law upon the subject of forcible entries and forcible detainers is in an obscure and unsatisfactory condition (see 1 Russell on Crimes, 7th edit., pp. 441—454 *et seq.*, and articles in the *Solicitor's Journal*, Vol. 37).

FORGERY.

Forgery.

The offence of forgery consists in the making of a *false document* with intent thereby to *defraud some other person or persons, though not necessarily any particular person*. It is a *misdemeanour* at the common law, and is still punishable as such, but in no case can an adult be tried for forgery except at the assizes. There are, however, numerous statutes which declare the forgery of specific documents to amount to *felony*; the Forgery Act, 1861 (24 & 25 Vict. c. 98), in particular dealing with a large number of different species of deeds and writings. If the document does not fall within any of these statutes, as, *e.g.*, a railway pass, or a false certificate of character forged in order to obtain an official position, the offence must be treated as a common law misdemeanour. See,

however, the special provisions as to *forged characters* under title MASTER AND SERVANT (p. 708); and as to *forged characters and forged certificates of service or discharge* in connection with the *naval, military, and marine* forces, see title SOLDIERS (*post*, p. 884).

It is forgery, *e.g.*, fraudulently to fill up a blank cheque to which a signature has already been attached; to fill it up for an amount larger than that which it was known to be intended to carry; or, indeed, to make any alteration in such a document with intent to defraud. So, too, it is forgery fraudulently to alter or obliterate words or figures already written, as, for example, the figures in an account or the crossing on a cheque; or, even, to sign one's own name, fraudulently intending the signature to be accepted as that of another person of the same name. But although the "fraudulent intent" is essential, it must be remembered that a document may be false and used in a fraudulent transaction and yet not be a "forged" document. Thus, where a man, in order to obtain goods, wrote out and signed, in the name of William Martin (his real name being Robert Martin), a cheque on a bank at which he had no account, it was held that the mere assuming and signing of a fictitious name, without an intention to defraud *by the use of such fictitious name*, was no forgery. The cheque was given *entirely as his own*, and credit was given to the man himself without any regard to the name and without any relation to a third person. But the defendant's acts would clearly have been held to amount to an obtaining of goods by false pretences (*R. v. Martin*) (*x*). If a forgery is committed, it is no defence to show that the forger took steps to prevent injury, as, *e.g.*, by taking up before presentation a bill of exchange to which he had given a false acceptance.

Illustrations.

Reference may be made to the following offences which are (*inter alia*) made *felonies* by the Forgery Act, 1861 (24 & 25 Vict. c. 98). The maximum punishment in each case is penal servitude (generally for life), and none of the offences is triable, in case of an adult, except at assizes.

Statutory felonies.

(x) (1879) 5 Q. B. D. 34; 49 L. J. M. C. 13; 44 J. P. 74; 14 Cox, 375.

Statutory Offences.

Forging
orders, &c.,
for payment
of money.

- (a) Forging or altering or knowingly uttering (i.) any *undertaking, warrant, order, authority, or request* for the payment of money, or for the delivery or transfer of any goods or chattels, or of any note, bill, or other security for the payment of money, or for procuring or giving credit; or (ii.) any *indorsement on or assignment of* any such undertaking, warrant, order, authority, or request; or (iii.) any *accountable receipt, acquittance, or receipt* for money or for goods (e.g., a pawn-ticket), or for any note, bill, or other security, for the payment of money; or (iv.) any *indorsement on or assignment of* such accountable receipt (24 & 25 Vict. c. 98, s. 23).

Transfers of
stock.

- (b) Forging *transfer of stock* at the Bank of England, or that of any other company; or a *power of attorney* relating thereto; or demanding to act under forged power; or personating owner of stock, and receiving or endeavouring to receive the dividend (ss. 2, 3).

Bank notes,
&c.

- (c) Forging, altering, or putting off any Bank of England or other *bank note, bank bill, &c.*; or having, without lawful excuse, any-forged bank note, &c., knowing the same to be forged (s. 12).

- (d) Purchasing, or receiving, or having in possession forged *bank notes* (s. 13). "Having in possession" covers possession on defendant's behalf by another person, or having the note anywhere for the benefit of himself or of some other person (see s. 45).

- (e) Engraving plates or making paper for the forgery of bills or notes, British or foreign (ss. 14—19).

Deeds, bonds,
&c.

- (f) Forging or altering or offering, knowing the same to be forged or altered, any *deed or bond or writing obligatory*, or forging the name of any witness thereto (s. 20).

Wills.

- (g) Forging or altering any *will, codicil, or testamentary disposition* (s. 21).

Bills of ex-
change, &c.

- (h) Forging, or altering, or offering or negotiating, knowing the same to be forged or altered, any *bill of exchange, or promissory note* (s. 22).

Obtaining
property
by forged
instrument.

- (i) Fraudulently *obtaining*, or endeavouring to obtain, any *property whatsoever under a forged or altered instrument* (s. 38). A telegram forged by a telegraph clerk and sent to a bookmaker making a bet was

held to be "an instrument" (*R. v. Riley* (y); see also as to forged *telegrams*, *post*, p. 797).

(j) Obliterating, &c., the *crossings on cheques* (s. 25; and see 45 & 46 Vict. c. 61, ss. 76—82; 46 & 47 Vict. c. 55, s. 17, as to crossing "generally" or "specially").

(k) Forging or altering or uttering, &c., any *summons*, *conviction*, *order*, or *warrant* of, or any recognizance, or deposition, or affidavit, or declaration of, or made before, a *justice of the peace* (s. 32). Official documents.

(l) We may add to this list the forging of the *seal or signature* of any person authorized by statute to *administer an oath*, or knowingly tendering any affidavit signed with such a forged signature (52 Vict. c. 10, s. 8). As to "*money*" or "*postal*" orders, see 8 Edw. 7, c. 48, s. 59, whereby it is provided that such orders are to be deemed orders for the payment of money and valuable securities within the meaning of the Post Office Act, 1908, and of the Forgery and Larceny Acts, 1861. Provision is also made as to the obliteration or alteration of the "crossing" of such orders, an offender being liable as if the money or postal order were a cheque; see (j), *supra* (8 Edw. 7, c. 48, s. 59 (ii)). Signature of commissioner for oaths.
Money orders.

Under the Forgery Act, 1861, an offender may be dealt with, tried, and punished, in any county or place in which he may be apprehended or be in custody, as though the offence had been actually committed there (24 & 25 Vict. c. 98, s. 41). Venue.

Principals in the second degree and accessories before the fact are punishable as principals, and accessories after the fact are liable to two years' imprisonment; while anyone who aids, abets, counsels or procures the commission of a misdemeanour under the Act (see, *e.g.*, s. 10) is punishable as a principal (s. 49). Accessories.

Any justice may issue a search warrant, upon sworn information that any person is believed to have in his possession, without lawful excuse, any bank note or implement for making bank paper; or any paper, plate, tool, or material for producing forged impressions; or any forged instrument; or any mould, seal, die, matter, or thing intended to be employed in forgery (s. 46). Search warrant.

(y) [1896] 1 Q. B. 309; 65 L. J. M. C. 74; 60 J. P. 519.

Proof of
handwriting.

It may be mentioned that, so far as the proof of handwriting is concerned, it is not necessary to call a professed "expert." Any experienced person may give evidence on the point, although he may not have gained his experience in the way of his profession (*R. v. Silverlock*) (z).

FRIENDLY SOCIETIES.

Societies to
which
statutes
apply.

The classes of friendly societies which may be *registered* under the Friendly Societies Act, 1896, are defined by s. 8 of that Act to include (a) friendly societies of the ordinary type for relief during sickness or in times of distress, for insuring money on the death of a member, for insurance against fire, &c., within the pecuniary limits prescribed by the section; (β) cattle insurance societies; (γ) benevolent societies; (δ) working men's clubs; (ε) specially authorized societies for purposes approved by the Treasury.

To these the Friendly Societies Act, 1908, adds societies for "guaranteeing the performance of their duties by officers and servants of the society or any branch thereof" (8 Edw. 7, c. 32, s. 1).

Conditions in
restraint of
trade.

"Trade
unions."

A society, the rules of which impose restrictive conditions on the conduct of any business or industry, was at the common law an illegal association. It was unlawful to fetter the freedom of action of anyone engaged in trade, whether as employer or workman, except so far as such fetter was reasonably necessary for the protection of the person seeking to impose it. However, by the Trade Union Act, 1871, it was provided that the purposes of a "trade union" should not, by reason merely that they are in restraint of trade, be unlawful so as to avoid any agreement or trust. But the legalization of the trade union is of a limited character, and will not enable any court to entertain proceedings to enforce an agreement between the members of the trade union as such for (*inter alia*) the application of funds to provide benefits (cf. s. 4 of Trade Union Act, 1871). If, therefore, the association would have been illegal at common law, such an agreement

(z) [1894] 2 Q. B. 766; 63 L. J. M. C. 233; 72 L. T. 298; 43 W. R. 145; 58 J. P. 788.

cannot even now be enforced. No doubt, where the *general and fundamental* object of an unregistered society is *not* to fetter the due course of trade and its friendly society objects *can be severed* from the trade union objects, civil proceedings may be taken to enforce an obligation which is not itself in restraint of trade (*Swaine v. Wilson*) (a). Indeed, *Fletcher Moulton*, L.J., has gone further, saying: "So soon as it is clear that *one* of the objects of a society is a *separate and distinct* object and that it is carried out *independently*, no question of its order of importance can have any legal bearing or effect. It may be different in cases where one is *ancillary and subordinate* to another and is solely for the purpose of more effectively accomplishing it. The courts may then take the latter as the *real or main* object and consider with regard to the other whether it so alters the primary object of the society as to affect its legal status" (*Gozney v. Bristol Trade and Provident Society*) (aa). But, where a society was *registered under the Trade Union Acts*, it was held that justices could not intervene, under the Friendly Societies Act, to enforce an agreement between the members to provide benefits (*Old v. Robson*) (b). It would seem, however, that, in this case, the court held the association to be *in itself illegal*, apart from statute (per *Channell, J.*, [1909] 1 K. B. at p. 910). It is a common mistake to suppose that *every* trade union would, apart from statute, be an unlawful combination. Since 1876, trade unions which may be registered have included both combinations which would have been unlawful before 1871 and also combinations which would not (cf. Trade Union Act, 1876, s. 16).

"Trade unions."—*contd.*

Justices' Jurisdiction in Disputes.

The provisions of the "Friendly Societies Act, 1896," as to *disputes* relate to *registered* friendly societies only (unless under s. 43, *post*, p. 487); while the provisions of

59 & 60 VICT.
C. 25.

(a) (1890) 24 Q. B. D. 252; 59 L. J. Q. B. 76; 62 L. T. 309; 54 J. P. 485.

(aa) [1909] 1 K. B. at p. 921; 78 L. J. K. B. 616; 53 S. J. 341; 100 L. T. 669; 25 T. L. R. 370.

(b) (1890) 59 L. J. M. C. 41; 62 L. T. 282; 38 W. R. 415; 54 J. P. 598.

59 & 60 VICT. the "Collecting Societies and Industrial Assurance Com-
c. 26. panies Act, 1896," relate to such societies and companies,
as defined by the Act, *whether registered or unregistered*,
corporate or unincorporate.

Friendly
societies—
registered.

DISPUTES in connection with friendly societies are generally settled by arbitration under the rules; but where the rules of a REGISTERED FRIENDLY SOCIETY direct that *disputes shall be referred to justices*, or contain *no direction as to disputes*, or where *no decision* is made within *forty days* after application to the society for a reference under the rules, the member or person aggrieved may apply to a *court of summary jurisdiction* to hear and determine the matter. In the case of a society *with branches*, the forty days does not begin to run until application has been made in succession to all the bodies entitled, under the rules, to determine the dispute; but the rules must not "require a greater delay than three months between each successive determination." In this way may be settled disputes *between a member*, or person claiming through a member or under the rules, *and the society* or an officer thereof, or between a *registered branch* or an officer thereof and *the society*, or between two or more registered branches or their officers, or between an *aggrieved person* who has [for not more than *six months*] *ceased to be a member*, or someone claiming through such person, *and the society* or branch or an officer thereof (59 & 60 Vict. c. 25, s. 68). The words "for not more than six months" were repealed by the Act of 1908, which came into operation on January 1st, 1909 (8 Edw. 7, c. 32, s. 6).

Collecting
societies and
industrial
assurance
companies—
registered or
unregistered.

Moreover, as to certain societies, WHETHER REGISTERED OR UNREGISTERED, which *receive contributions or premiums by means of collectors at a greater distance than ten miles* from the registered office or principal place of business, provision is made for the settlement of disputes by a court of summary jurisdiction. A member or person insured (or anyone claiming through such member or person, or under the rules) may apply to the court for the place where he resides, irrespective of and *notwithstanding any rule* as to the determination of disputes. This provision extends not only to COLLECTING FRIENDLY SOCIETIES, but also to INDUSTRIAL ASSURANCE COMPANIES, corporate or unincorporate, receiving contributions in a

similar manner and granting assurances on any one life for LESS THAN 20*l.*, so far as their business relates to assurances in respect of which they receive the premiums at less periodical intervals than *two months* (59 & 60 Vict. c. 26, ss. 1, 7). But justices have no jurisdiction in a dispute as to any policy originally granted for a sum equal to or exceeding 20*l.* (*Cowling v. Topping*) (c); and it is left an open question whether a company which issues *any* such policy comes within the purview of the section at all (*ib.*)

If any dispute arises between a friendly society or branch, *whether registered or unregistered*, and a man who has enlisted in the militia, or territorial force, such dispute, if arising from the man's enrolment or service, must be decided by a court of summary jurisdiction (59 & 60 Vict. c. 25, s. 43; Stat. Rules and Orders, 1908, No. 256, cited in "Regulations for the Territorial Force, 1908," p. 200). As to the *Militia*, see now, *post*, p. 721.

Militiamen
and terri-
torials.

The object of these sections is to provide for the ready settlement of internal disputes between the society and its members. But a *dispute* as to whether a person *is in fact a member* of the society was held not to be a dispute between the society and a member of it as such; as, *e.g.*, where a question arises as to the reinstatement of an expelled member. If the society choose to repudiate or expel a member, they are estopped from saying he is a member and therefore bound by the rules as to disputes (*Palliser v. Dale*) (d). But by the Act of 1908, the word "dispute" *is to include* one "arising on the question whether a member or person aggrieved is entitled to be or to continue to be a member or to be reinstated as a member" (8 Edw. 7, c. 32, s. 6). So, too, if a claimant seeks the return of premiums (paid on a policy issued by an industrial assurance company) on the ground that the policy was void for want of insurable interest, he is estopped from saying that he is a "person insured," and as such entitled to have the controversy settled by justices (*London, Edinboro', &c. v. Partington*) (e).

What is a
"dispute."

(c) [1906] 1 K. B. 466; 75 L. J. K. B. 176; 91 L. R. 209; 70 J. P. 95; 54 W. R. 423; 22 T. L. R. 219.

(d) [1897] 1 Q. B. 257; 66 L. J. Q. B. 236.

(e) (1903) 67 J. P. 255.

Meaning of
"dispute."—
contd.

Nor is this principle of estoppel affected by the provision as to a "person aggrieved who has ceased to be a member." That clause applies only to such a dispute as must have been determined under the rules *whilst the person aggrieved was still a member*. And, although, as we have seen, one who has *ceased to be a member* may raise the question of reinstatement, the statute expressly excludes disputes other than those on questions "which arose whilst he was a member or arise out of his previous relation as a member to the society or branch" (8 Edw. 7, c. 32, s. 6). Where the matter has been *decided* by arbitration under the rules (except in the case of a "collecting" society or "industrial assurance" company), justices cannot entertain a claim; but, if the domestic jurisdiction be not exercised *according to the rules* of the society, the dispute will not be treated as *decided* by arbitration thereunder (cf. *Andrews v. Mitchell* (*f*), where a member, summoned before an arbitration committee, was expelled on a ground of which no notice in writing had been given to him as required by the rules).

As to the statement of a *special case*, and as to *discovery of documents*, see 59 & 60 Vict. c. 25, s. 68 (vii.); c. 26, s. 7.

Offences under 59 & 60 Vict. cc. 25, 26.

NOTA
BENE.

The provisions of the Friendly Societies Act, 1896, with respect to OFFENCES under that Act (*i.e.*, c. 25), and the *procedure* relating thereto, apply to *offences* under c. 26 and, as so applied, extend to *unregistered* collecting societies and industrial assurance companies, as if registered (c. 26, s. 14, (ii.)).

Fraudulently
obtaining,
withholding,
or misappropriating property of
society.

Everyone commits an OFFENCE who (a) *obtains* possession, by a *false representation or imposition*, of any *property* (including the books or papers) of a *registered* society or branch; or, (b) having the same in possession, *withholds or misapplies* the same or wilfully applies any part thereof to purposes other than those directed by the rules and the statute (c. 25, ss. 87 (iii.), 106).

Under a similar section in an earlier Act, it was held that the withholding or misappropriation must be

(*f*) [1905] A. C. 78; 74 L. J. K. B. 333; 91 L. T. 537.

fraudulent (*Barrett v. Markham* (g); and see *Madden v. Rhodes* (h), a case decided under s. 12 of the Trade Union Act, 1871, which is *in pari materiâ*, cf. *post*, p. 494.) But, although the section does not apply to the recovery of a mere debt, yet a justice should not refuse process if there is *primâ facie* evidence that the accused is withholding or misapplying property of the society (*R. v. Bennett*) (i). And by the Act of 1908, if it is *not proved* that the defendant acted with any *fraudulent* intent, an ORDER (enforceable as one for a "civil debt," *ante*, p. 118) may be made directing delivery of the property and repayment of any money (8 Edw. 7, c. 32, s. 9).

59 & 60 Vict.
cc. 25, 26.

Complaint (in the nature, it would seem, of an *information*) may be made by the society or branch or a member duly authorized, or the trustees or committee, or by the chief registrar or any assistant registrar by his authority or by any member authorized by the central office (c. 25, s. 87 (iv.)). It seems that, if an offender suffers the penalty, a civil action will not afterwards lie against him to recover the money (*Vernon v. Watson*) (k).

PENALTY.—FINE, not exceeding 20*l.*, and costs, together with an ORDER to deliver up the property or repay the money improperly applied; and, *in default* of such delivery or repayment or of the payment of the fine and costs, *imprisonment*, with or without hard labour, for not more than three months (but see *scale*, p. 111).

PENALTY.

Every *officer* of a *registered* society or branch, *having receipt or charge of money*, must render account at the times required by the rules of the society or branch. He must, too, after demand made (or notice in writing given or left at his last or usual place of residence) by the society or branch or by the trustees or committee thereof, give in his account for examination as required by them, and pay over all sums and deliver all property (including books or papers) in his hands or custody to such person as the society, branch, trustees, or committee may appoint. In case of *neglect or refusal* on the part of the officer to fulfil these obligations, the trustees or

Neglect of
officer to
account.

(g) (1872) L. R. 7 C. P. 405; 41 L. J. M. C. 118; 27 L. T. 313.

(h) [1906] 1 K. B. 534; 75 L. J. K. B. 329; 70 J. P. 230.

(i) (1894) 63 L. J. M. C. 181.

(k) [1891] 2 Q. B. 288; 60 L. J. M. C. 742; 56 J. P. 85; 64 L. T.

59 & 60 Vict.
cc. 25, 26.

authorized officers of the society or branch may (amongst other remedies) apply to a court of summary jurisdiction, whose *order* will be final and conclusive (c. 25, s. 55). As to the *enforcement* of the order, see *ante*, p. 120.

Neglect to
send notices,
make returns,
&c. : furnish-
ing false
information.

A *registered society* or branch, or any *officer* or member thereof, commits an OFFENCE in case of—

- (a) Failure to give any *notice*, to send any *return* or document, or to do or allow to be done any thing *required by the Act*;
- (b) Wilful *neglect or refusal to do any act* or furnish any information *required for the purposes of the Act* by the chief or other registrar, or by any other person authorized under the Act; or the doing of any thing forbidden by the Act.
- (c) The making of a return, or the wilful furnishing of information, in any respect false or insufficient (*ib.* s. 84).

PENALTY.—FINE, not exceeding 5*l.*, and in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111).

Offences by
societies to be
also offences
by *officers*, &c.

In case of an OFFENCE by a *registered society* or branch, every *officer* bound by the rules to fulfil any duty whereof the offence is a breach (or, if there be no such officer, then any *member of the committee* unless such member is *proved* to have been ignorant of or to have attempted to prevent the commission of the offence) is liable to the SAME PENALTY as if *he* had committed the offence (*ib.* s. 85).

Other offences
under the
Friendly
Societies Act.

- A PENALTY of 5*l.* is, too, incurred by any person who—
- (i.) Refuses to attend, produce documents, or give evidence when a dispute is referred, under the Act, to the chief or other registrar (*ib.* s. 84 (e)) ; or,
 - (ii.) Being an officer or member of a branch, which has seceded or been expelled, uses the number of the branch or any name implying that the body of which he is an officer or member continues to be a branch of the society (*ib.* ss. 21, 84 (d)).

Wilful falsi-
fications of
balance-
sheets,
collecting
books, &c.

Every person commits an OFFENCE who *wilfully* makes, orders, or allows to be made, any *entry, erasure in, or omission from*, any *balance-sheet* of a *registered* friendly society, or branch, or any return or document required to be sent, produced, or delivered, *with intent to falsify the same or to evade the Act* (*ib.* s. 88). So, too, in the case of a *collecting society* or *industrial insurance*

company, it is a like offence wilfully to make, order or allow to be made, any entry, erasure in, or omission from a *contribution or collecting book* with intent to falsify it or to evade the Act (c. 26, s. 15).

59 & 60 Vict.
cc. 25, 26.

PENALTY.—FINE, not exceeding 50*l.*, and, in default of distress, imprisonment, *without* hard labour, according to scale (p. 111).

The fines are recoverable at the suit of the chief or assistant registrar, or of any person aggrieved (c. 25, s. 91 (ii.); c. 26, s. 14 (ii.)).

Recovery
of fines.

It may be added that a penalty of 5*l.* is, too, incurred by the society or branch, WHETHER REGISTERED OR NOT, in case of *payment* of more than 6*l.* on the death of a child under *five* years of age, or more than 10*l.* on the death of a child under *ten* years of age. Indeed, the society must not insure or pay a sum which would exceed these respective amounts if added to any sum payable by *another* society on the death of the child (c. 25, ss. 62, 84 (f)). The society must, moreover, under a like penalty, make payment only to the parent or personal representative of the parent, and upon the production of a death certificate containing special particulars (*ib.* ss. 63, 64, 84 (f)). But the Act does not apply where the insurance is effected by a person having an *insurable interest* in the life of the child (*ib.* s. 67). And a like PENALTY of 5*l.* is, moreover, incurred by a parent, or representative of a parent, who produces a certificate of death other than is in the Act provided, or attempts, by a *false certificate of death* or other fraudulent means, to defeat the provisions of the Act as to payment on the death of a child (*ib.* s. 84 (g)).

Payments on
death of
children.

These provisions relating to payments on the death of children are extended to ALL *industrial assurance* companies (c. 26, s. 13). And as to *trade unions*, see 39 & 40 Vict. c. 22, s. 2.

Any person who “aids or abets in the amalgamation or transfer of engagements or in the dissolution” of a society otherwise than as in the Act provided, is liable to a FINE of 5*l.*, or, alternatively, to IMPRISONMENT, with hard labour for not more than THREE MONTHS (c. 25, ss. 70, 78, 90).

Special
offences under
59 & 60 Vict.
c. 25.

Attempting to mislead or defraud by the use of *false rules* is an *indictable* misdemeanour; as is also the making of a false or fraudulent statement in any *statutory declaration* required by the Act (*ib.* s. 87 (i.) (ii.)).

59 & 60 Vict.
cc. 25, 26.

As to who may make "complaint" under this section, see s. 87 (iv.) (*ante*, p. 489).

Offences
under 59 & 60
Vict. c. 26.

In the case of *collecting societies* and *industrial insurance companies*, whether registered or not, to which 59 & 60 Vict. c. 26, applies (see *ante*, p. 486), it is an OFFENCE to

(a) Attempt to transfer a member or person insured from one society or company to another without the written consent required by s. 4 (i.) (s. 14 (i.) (b)).

(β) Fail to give the notice required to be given by the society, &c., to which the person is sought to be transferred to that *from* which he is sought to be transferred (ss. 4 (ii.), 14 (i.) (c)). The offence would be complete, although the policy in the latter society still remained in existence (*Pearl Life Assurance Co. v. Scottish Legal Life Assurance Society*) (l). And see *Salvation Army Assurance Society v. British Life Assurance Co.* (ll).

(γ) (If a collector) take part in a general meeting, or become a member of the committee or hold office (except as provided). So it is an offence for a member of the committee to become a collector (s. 14 (i.) (a)).

The PENALTY is a *fine* not exceeding 5*l.* (s. 14 (ii.)).

Recovery of
fines.

All *fines* imposed by the Acts, or by regulations thereunder, or by the rules of a registered society or branch, are recoverable *summarily* at the suit of the chief or an assistant registrar or of any person aggrieved (c. 25, s. 91; c. 26, s. 14 (ii.)). *Costs or expenses* ordered by the registrar to be paid, *e.g.*, under s. 76 of c. 25, are recoverable as a "civil debt," *ante*, p. 118 (8 Edw. 7, c. 32, s. 10).

Continuing
offences.

Every default under the Friendly Societies Acts constituting an offence, if continued, constitutes a new offence in *every week* during which the default continues (c. 25, s. 86); and see c. 26, s. 14 (ii.), *ante*, p. 488.

Appeal.

APPEAL lies to quarter sessions against all orders or convictions under the Acts (*ib.* s. 93; c. 26, s. 14 (ii.)).

Venue.

OFFENCES may be prosecuted, so far as proceedings against a *registered* society or branch or an *officer* thereof are concerned, either in the place where the *registered office is situate* or where the *offence was committed*. As against any *other person*, proceedings must be taken

(l) [1901] 1 K. B. 528; 70 L. J. K. B. 360; 84 L. T. 153.

(ll) [1908] S. C. 1138:—Ct. of Sess.

either *where he is resident* at the time of their institution, **59 & 60 Vict.**
 or *where the offence was committed* (c. 25, s. 92; c. 26, **cc. 25, 26.**
 s. 14 (ii.)).

A *registered* friendly society or branch may sue or **Who may be**
 be sued in the names of the *trustees* or other officers **made parties.**
 authorized by the rules, without other description than
 the title of their office (c. 25, s. 94 (i.)) ; and may also be
 sued by a *member* or person claiming through a member
 in the name of *any officer* or person who *receives con-*
tributions or issues policies on the society's behalf *within*
the jurisdiction of the court, adding the words " on behalf
 of " the society or branch (naming the same) (*ib.*s. 94 (ii.)).
 If the defendant is himself a trustee, proceedings may
 be taken by the other trustees or trustee of the society
 or branch (8 Edw. 7, c. 32, s. 11).

The summons, &c., issued against the officer or other **Service of**
 person sued on behalf of a *registered* society or branch **summons.**
 may be served personally or a copy may be left at the
 registered office or at any place of business of the society
 or branch within the jurisdiction of the court in which
 the proceeding is brought. So in proceedings against
any society or branch for the recovery of a *fine*, process
 may be served by leaving a copy at such office or place.
 If the office or place of business is closed, a copy may be
 posted on the outer door. In the case of a registered
 society, unless the service is *personal* or at the *registered*
office, a copy must be sent in a *registered letter* to the
 committee posted six days at least before the next step is
 taken (c. 25, s. 94 (iv.) (v.)) ; 8 Edw. 7, c. 32, s. 11).

An *acknowledgment of registry* issued by the registrar **Evidence.**
 is *conclusive evidence* of registration, unless it be proved
 that the registry has been suspended or cancelled (c. 25,
 s. 11) ; and any document bearing the *seal or stamp*
of the central office must be received in evidence without
 further proof, while any document purporting to be
 signed by the chief or any assistant registrar, an
 inspector, public auditor or valuer under the Acts, must,
 in the absence of evidence to the contrary, be received
 without proof of signature (*ib.* s. 100).

Legal proceedings in reference to INDUSTRIAL AND **Industrial**
 PROVIDENT SOCIETIES (*e.g.*, " Co-operative " and " Land " **and**
 Societies) are regulated by ss. 62—70 of the Act of 1893 **Provident**
 (56 & 57 Vict. c. 39). Friendly societies act through **Societies.**

56 & 57 Vict.
c. 39.
Offences.

trustees, but these societies are *incorporated* bodies. The provision as to *fraudulently obtaining, withholding, or misapplying property* of the society (s. 64) is similar to that contained in the Friendly Societies Act of 1896 (*ante* p. 488). The following OFFENCES by registered societies are punishable with a FINE of 5*l.*, recoverable at the suit of the chief registrar, an assistant registrar, a person aggrieved, or (if imposed by the rules of a registered society) at the suit of the society (ss. 68, 69): (a) Failure to send notices, make returns, do things required by the Act (s. 62 (i.)); (β) wilful neglect or refusal to do any act or furnish information required by an authorized person, or doing anything forbidden by the Act (s. 62 (ii.)); (γ) making false or insufficient returns, or wilfully furnishing false or insufficient information (s. 62 (iii.)); (δ) carrying on banking business, &c., with withdrawable share capital, or without displaying required statements (ss. 19, 62 (iv.)); (ε) delivery of untrue rules, &c. (s. 67). A FINE of 50*l.* may be imposed for (i.) wilful falsification of the balance sheet of a registered society, or of a collecting book, or of any return or other required document (s. 65); (ii.) not using name of registered society on seal, official publication, cheque, &c. (s. 66).

Offences by *societies* to be also offences by *officers*, &c. (s. 63); cf. *ante*, p. 490. APPEAL from an order or conviction lies to quarter sessions (s. 70).

Disputes.

Where the rules so direct, *disputes* must be referred to a court of summary jurisdiction, unless the parties consent to refer to the county court (s. 49 (iv.)). If the rules contain no direction, or no decision is made within forty days after application for reference, the member or person aggrieved may apply *either* to the county court *or* to a court of summary jurisdiction (s. 49 (v.)).

As to the statement of a *special case* and as to *discovery* of documents, see s. 49 (vi.).

Trade Unions.

The legal status of a TRADE UNION has already been briefly dealt with (*ante*, p. 484). An officer or member of a registered trade union, or, indeed, any person whatsoever, commits an OFFENCE if, by *false representation or omission*, he obtains possession of any moneys, securities, books, papers, or other effects of such trade union, or, if, having the same in his possession, he *wilfully withholds*

Frauds by
by officers or
members.

or *fraudulently misapplies* the same, or wilfully *applies* any part thereof to *purposes other than those expressed in the rules* (34 & 35 Vict. c. 31, s. 12); and see *ante*, p. 489.

Complaint may be made by any person on behalf of the trade union, or by the registrar of friendly societies, to a court of summary jurisdiction for the place where the registered office is situate or where the offence was committed (*ib.*; 39 and 40 Vict. c. 22, s. 5).

PENALTY.—FINE not exceeding 20*l.*, and costs not exceeding 20*s.*; and the court may order delivery up of the moneys, &c., or other effects, and repayment of moneys improperly applied. In default of payment of the penalty or on disobedience of the order, imprisonment, with hard labour, for not more than three months, according to scale (p. 111). Penalty.

As to allowing a trade union to be in operation for seven days without a registered office, see 34 & 35 Vict. c. 31, s. 15; as to failure to make annual statement to the registrar or the wilful making of a false entry in such statement, see *ib.*, s. 16. Other offences.

As to proceedings by registrar, or person aggrieved, in respect of failure to give notices required by the Acts, see 39 & 40 Vict. c. 22, s. 15.

Proceedings must be taken before the stipendiary magistrate if there be one (34 & 35 Vict. c. 31, s. 19). As to disqualification of justices, see *ante*, p. 18. Procedure.

And as to BUILDING SOCIETIES see 37 & 38 Vict. c. 42, and 57 & 58 Vict. c. 47. As to the penalties for the fraudulent obtaining, withholding, or misappropriation of the property of the society, see 37 & 38 Vict. c. 42, s. 31, and 57 & 58 Vict. c. 47, s. 18. As to several offences by *officers*, see 37 & 38 Vict. c. 42, s. 43; and as to the acceptance by them of a gift, bonus, &c., in connection with a loan, see 57 & 58 Vict. c. 47, s. 23. As to offences by *the society*, see 57 & 58 Vict. c. 47, s. 21; and as to the making by any person of false statements in (or the falsification of) any document required by the Building Societies Act to be sent to the registrar, see *ib.* s. 22. Building Societies.

As to LOAN SOCIETIES see 3 & 4 Vict. c. 110. The procedure as to the recovery of a loan before justices is set forth in s. 16 of this Act. As to recovery of the Loan Societies.

amount ordered to be paid, in case there is no sufficient distress, see *ante*, p. 118.

GAME.

Meaning of
"game."

Throughout this note "game" is used as a synonym for "hares, pheasants, partridges, grouse, heath or moor game, black game, and bustards."

Night Poaching.

Meaning of
"night."

"Night" is defined to commence at the expiration of the first hour after sunset and to end at the beginning of the last hour before sunrise (9 Geo. 4, c. 69, s. 12).

Night
poaching.

(a) Everyone commits an offence who, BY NIGHT, unlawfully—

- (i.) *takes or destroys any game or rabbits* in any land, whether open or inclosed, or in any public road or path, or at the sides thereof, or at the outlets or gates from the land into such road or path.
- (ii.) Enters or is on any land, whether open or inclosed, *with any gun, net, engine, or other instrument* for the purpose of taking or destroying *game* (9 Geo. 4, c. 69, s. 1; 7 & 8 Vict. c. 29, s. 1).

APPEAL lies to quarter sessions.

PENALTY.—*First offence*.—IMPRISONMENT, with or without hard labour, for not more than *three months*; and at the expiration of the term (unless the court dispenses with them), recognizances, the accused in 10*l.*, and two sureties in 5*l.* or one in 10*l.* for his not so offending for one year, or, in default of sureties, *imprisonment*, with or without hard labour, for six months. As to the power to substitute a *fine* for peremptory imprisonment, see *ante*, p. 106.

Second offence.—The penalties and sureties are doubled; and the defendant must be given THE OPTION of *trial by jury*. As to the procedure to be adopted, see *ante*, p. 65.

Third offence under the same section.—An *indictable* misdemeanour not triable summarily. [Penal servitude for seven years.]

Assaulting
keepers, &c.

- (b) Owners and occupiers of the land (or, of the land adjoining the road if the offence is committed on a

road), or their keepers, &c., may pursue and apprehend the offender, where offence (a) has been committed; and if the offender *assaults or offers violence* with a gun, stick, bludgeon, or other *offensive weapon*, he commits a separate offence, which is an *indictable* misdemeanour not triable summarily. [Penal servitude for seven years.] (9 Geo. 4, c. 69, s. 2.)

- (c) If *three or more* persons together unlawfully enter or are upon any land BY NIGHT to take or destroy *game or rabbits*, any one of them being *armed* with a gun, bludgeon, or other *offensive weapon*, each of them commits an *indictable* misdemeanour which is not triable except at assizes. [Penal servitude for fourteen years.] (9 Geo. 4, c. 69, s. 9.)

Three or more poachers at night and armed.

It will be observed that it is sufficient if any one of the men is armed with an offensive weapon; and it seems that, when there are more than three defendants, it need not be proved that *all* entered the land if at least three did so together, and those not on the land were close at hand ready to assist (*R. v. Whittaker*) (m). Large stones or heavy walking-sticks may be “offensive weapons” if intended to be used with violence (cf. *R. v. Grice* (n); *R. v. Sutton* (o)). The owners and occupiers of the land and their keepers, servants, &c., may pursue and apprehend offenders (s. 2).

The prosecution in respect of the above *indictable* misdemeanours must be commenced within twelve months (s. 4).

- (d) Anyone who unlawfully and wilfully *by night* takes or kills any *hare or rabbit* in a *warren or ground lawfully used for the breeding or keeping of hares or rabbits*, whether it be inclosed or not, commits an *indictable* misdemeanour which is not triable summarily, and is punishable by fine and imprisonment (24 & 25 Vict. c. 96, s. 17).

Killing, &c. hares or rabbits in warrens at night.

If there is sufficient evidence of the commission of this offence, justices must commit for trial and not assume to deal summarily with the case as though the offence (a) (i.) had been committed.

(m) (1848) 17 L. J. M. C. 127; 3 Cox, 50.

(n) (1837) 7 C. & P. 803.

(o) (1877) 42 J. P. 245; 13 Cox, 648.

Poaching in the Daytime.

Daytime.

By "daytime" is meant the period between the beginning of the last hour before sunrise and the end of the first hour after sunset (1 & 2 Will. 4, c. 32, s. 34).

Trespasses in daytime in search of game, &c.

Everyone is guilty of an offence who, in the daytime, commits a trespass by entering or being upon any land in search or pursuit of game, woodcock, snipe, quail, landrail, or conies (1 & 2 Will. 4, c. 32, s. 30).

PENALTY.—FINE, not exceeding 2*l.* and costs, and, in default of *payment*, imprisonment, with or without hard labour, according to scale (p. 111).

If the trespassers are together to the number of *five or more*, each becomes liable to a penalty of 5*l.* and costs, recoverable similarly (*ib.*).

One justice may convict, but as to the limits of his power of punishment see *ante*, p. 12.

If any one of the *five or more* trespassers is *armed with a gun*, and an endeavour is made by violence or intimidation to repel interference, each becomes liable to a penalty of 5*l.* and costs (recoverable similarly), in addition to any other penalty (*ib.*s. 32).

Refusing name and address; or wilfully remaining when required to quit.

If trespassers in search of game, &c., refuse to tell to the owner of the game, or the occupier, or the authorized servant of either, their *real names and addresses*, or *wilfully continue on or return to the land* (when *required to quit and give their names and addresses* by the person having the right to the game, or the occupier of the land, or by his gamekeeper, or by a servant, or other person authorized), they may be apprehended by the party so requiring, or by any person acting in his aid, and conveyed before a justice. If, however, an offender cannot be brought before a justice within twelve hours, he must be discharged, and proceeded against in the usual way by summons or warrant (*ib.* s. 31).

Penalty.

PENALTY.—FINE, not exceeding 5*l.* and costs, and, in default of *payment*, imprisonment, with or without hard labour, according to scale (p. 111). One justice may convict, but as to the limits of his power of punishment see *ante*, p. 12.

Procedure.

Proceedings in each of the above cases must be commenced *within three months* (*ib.* s. 41), and appeal lies to

quarter sessions (*ib.* s. 44). As to who may lay the information, cf. *Middleton v. Gale*, cited *ante*, p. 39.

When any person is found, by day or night, on any land in search or pursuit of game, with *any game* in his possession which appears to have been recently killed, the person who has the right of killing game there, or the occupier of the land, or his servant, &c., may demand the same, and if refused, may seize and take it by force (*ib.* s. 36). Seizure of game.

The provisions of the Game Act, 1831, against trespassers, do not apply to persons coursing or hunting with hounds or greyhounds, in fresh pursuit of a fox, hare, or deer which has been started on other land; nor do they apply to a person claiming and exercising a right of free warren or free chase, nor to any lord or steward of the Crown of any manor or royalty, nor to any gamekeeper lawfully appointed by such person, lord, or steward (*ib.* s. 35). But this section does not, of course, authorize the intrusion of foxhunters or other trespassers on private lands (*Paul v. Summerhayes*) (*p*). Evidence. The leave of the occupier will be no defence in proceedings for game trespass when the landlord is entitled to the game, but the defendant may prove by way of defence any matter which would have been a defence to an action for the trespass (*ib.* s. 30). Now, on a parol demise of land, the right to sport is, *primâ facie*, in the occupier (*Coleman v. Bathurst*) (*q*); if, therefore, the defendant *proves* that he had *the leave of the occupier* to do what he in fact did, the onus will then be cast on the prosecution to *prove* the reservation by the landlord or the formal conveyance of the right to the sporting tenant, as the case may be (*Taylor v. Jackson*) (*r*). As to a CLAIM OF RIGHT, see *ante*, pp. 87—90, and *Watkins v. Major*, there cited.

It is, moreover, necessary to distinguish between a mere *civil trespass* and a *trespass in search of game*. The lord of the soil has a qualified property in the creature whilst it remains on his land; but (except in the case of a right of free warren, &c.) when it has been driven off the land where it was started, other considerations arise;

(*p*) (1879) 4 Q. B. D. 9; 48 L. J. M. C. 33.

(*q*) (1871) L. R. 6 Q. B. 366; 40 L. J. M. C. 131.

(*r*) (1898) 78 L. T. 555; 62 J. P. 424.

Evidence—
contd.

see also *post*, p. 658. "The law," wrote Mr. Oke, "seems to treat the claims of the landowners as extinguishing each other, and confers on the person who first captures it the property in the animal captured, whether such person be a poacher or trespasser or not"; but cf. s. 36, *ante*, p. 499. Where a bird was fired at by the defendant after it had crossed the boundary into his neighbour's land, the court held that the defendant did not commit a *trespass in search of game*, although he entered upon another man's land for the express purpose of carrying off the bird which he had just killed (*Kenyon v. Hart*) (s). But, in a somewhat similar though earlier case, the defendant was less fortunate, apparently because, in that case, the bird rose in the first instance on the neighbour's land, and the transaction (*i.e.*, the shooting and the entry) was all "one act" (*Osbond v. Meadows*) (t). And, indeed, justices were directed to convict where the defendant, standing on his own land, had shot at and killed a grouse sitting on his neighbour's allotment, and, *after a lapse of nine hours*, had entered upon the allotment to search for the dead bird (*Horn v. Raine*) (u). Nor is it necessary to prove that the searching and pursuing was with the intention of *killing at the time* (*Stiff v. Billington*) (x). The offender must personally enter the land on which the trespass is alleged, but it is sufficient if he fires from a highway with inclosures on either side, provided that the soil of the highway is vested in the adjoining owner subject to the right of the public to use it as a highway (cf. *R. v. Pratt*) (y).

Killing hares,
&c., in
warrens
during the
daytime.

Moreover, any person commits an offence who in the daytime *takes or kills a hare or rabbit* in any warren or ground used for the breeding or keeping of hares and rabbits, whether inclosed or not, or who, at any time, sets or uses any snare or engine therein for the taking of hares or rabbits (24 & 25 Vict. c. 96, s. 17). As to *procedure*, under *this* statute, see *post*, pp. 660, 661.

(s) (1865) 34 L. J. M. C. 87; 11 L. T. 733.

(t) (1862) 31 L. J. M. C. 238; 6 L. T. 290; 26 J. P. 439.

(u) (1898) 67 L. J. Q. B. 533; 78 L. T. 654; 62 J. P. 420.

(x) (1901) 84 L. T. 467; 49 W. R. 486; 65 J. P. 424; 17 T. L. R. 430.

(y) (1855) 24 L. J. M. C. 113; 1 Jur. N. S. 681; Dears. 502; 4 E. & B. 860.

PENALTY.—FINE, not exceeding 5*l.*, and, in default of *payment*, imprisonment, with or without hard labour, according to scale (p. 111). One justice may convict, but as to the limits of his power of punishment see *ante*, p. 12. As to a similar offence *by night*, see *ante*, p. 497.

Destroying Game, Eggs, &c.

Any person commits an offence who, with intent to destroy or injure game, places *poison* on any ground where game usually resort, or in any highway (1 & 2 Will. 4, c. 32, s. 3; and cf. *post*, p. 507). Laying *poison* to kill game.

PENALTY.—FINE, not exceeding 10*l.* and costs, and in default of *payment*, imprisonment, with or without hard labour, according to scale (p. 111).

And any person commits an offence who, not having the right to kill game on the land, nor due permission, takes from or destroys in the nest any *game* eggs, or the eggs of any *swan*, *wild duck*, *teal*, or *widgeon*, or who knowingly has in his possession any eggs so taken (*ib.* s. 24). The section contains no power of *seizure* (cf. *Stowe v. Benstead*, cited *post*, p. 506). Taking or destroying eggs.

PENALTY.—FINE, not exceeding 5*s.* for each egg and costs, recoverable similarly.

Proceedings must be commenced *within three months*, and APPEAL lies to quarter sessions (*ib.* ss. 41, 44).

Licence to Kill Game, &c.

Any *unlicensed* person, who kills or takes any game or uses any dog, gun, net, or other engine or instrument for the purpose of searching for or killing or taking game, commits an offence (1 & 2 Will. 4, c. 32, s. 23). Unlicensed person killing, or searching for, game.

PENALTY.—FINE, not exceeding 5*l.* and costs, and in default of *payment*, imprisonment, with or without hard labour, according to scale (p. 111). APPEAL lies (*ib.* s. 44). Sporting without licence.

And *in addition* the offender is liable to an *excise* penalty of 20*l.* under 23 & 24 Vict. c. 90, s. 4. An information charging the defendant with taking, killing, and pursuing game without a licence, was held to disclose only one offence, and the justices were wrong in dismissing the information as charging three separate Excise Act.

Failing to
produce
licence on
demand.

offences (*Laxton v. Jefferies*) (z). Under the last-cited Act (s. 10) any person discovered by an officer of Inland Revenue, or by any person licensed to kill game, or by the owner or occupier of the land, doing any act whatever in respect of which a licence to kill game, &c., is required, is bound, upon the demand of such officer or person, to *produce* his licence and permit the same to be read and copied, or to *give his name* and address and the place at which he took out his licence. The penalty for disobedience is 20*l.* As to production of the licence to an officer of the county council, cf. Order in Council, Oct. 19th, 1908.

Game licence.

An excise licence is required for the pursuit of game, woodcock, snipe, quail, landrail, coney, or deer; but not for the killing of *conies* by the owner of a warren or inclosed land, or by the tenant of land either by himself or by his permission; nor for the killing of *hares* by the occupiers of inclosed lands or by the owner thereof (who has the right of killing game thereon) by himself or by an agent duly authorized under the statute (see 11 & 12 Vict. c. 29); nor for the taking of woodcock or snipe with nets or springs. Nor is it required for the hunting and killing of hares and deer with hounds; nor for assisting a licensed person to kill game, &c.; nor for occupiers (or persons authorized by them) under the Ground Game Act, 1880, s. 4. No *gun* licence need be taken out by a person holding a licence to kill game; but, upon excise proceedings for pursuing game, &c., without licence, the defendant, although acquitted on the main charge, may be forthwith convicted of carrying a gun without licence (*post*, p. 516).

In excise prosecutions for taking game without a licence, the officer of Inland Revenue, or of the county council (see Order in Council, Oct. 19th, 1908, par. ix.), has a right to conduct the case, although the prosecution be not in his name. A general authority given to him is sufficient (*R. v. Turner*) (a).

Killing at Unlawful Seasons.

Killing out of
season.

Any person *taking* or *killing* any

Partridge between February 1st and September 1st;

(z) (1894) 58 J. P. 318 (and cf. *ante*, p. 114).

(a) (1894) 58 J. P. 320 (cf. *ante*, p. 448).

Pheasant between February 1st and October 1st;
 Black Game (except in certain specified localities),
 between December 10th and August 20th;
 Grouse between December 10th and August 12th;
 Bustard between March 1st and September 1st;

is liable to a PENALTY of 1*l.* per head and costs, and in default of *payment*, imprisonment, with or without hard labour, according to scale (p. 111).

And any person who kills, or takes, or uses any dog, gun, or other engine or instrument for the purpose of killing or taking any *game* on Sunday or Christmas Day commits an offence (1 & 2 Will. 4, c. 32, s. 3).

On Sunday or
 Christmas
 Day.

PENALTY.—FINE, not exceeding 5*l.*, and, in default of *payment*, imprisonment, with or without hard labour, according to scale (p. 111).

Proceedings must be commenced *within three months*, and APPEAL lies to quarter sessions (ss. 41, 44).

Licences to Deal in Game.

These licences are now granted in the provinces by the district or borough councils (56 & 57 Vict. c. 73, ss. 27 (i.) (c), 32). The licence empowers the holder to buy game from any person who may lawfully sell it (*i.e.*, a person holding a full annual licence to kill), and to dispose of it at any *one* house or shop, which must be specified in the licence, and furnished with a board inscribed with the holder's name, and the words "Licensed to deal in game." The statutes now apply to game birds killed abroad and imported (56 Vict. c. 7, s. 2).

An excise licence must, too, be obtained from the County Council, under a penalty of 20*l.* (23 & 24 Vict. c. 90, s. 14; 24 & 25 Vict. c. 91, s. 17).

See Order
 in Council,
 Oct. 19th,
 1908.

The following offences relate to the *buying and selling* of game:—

Offences as to
 the dealing in
 game.

(a) *Licensed dealer* buying or selling, or having in his possession, any bird of game more than *ten days out of season*; or any *other person* buying or selling beyond the same period, or having in his possession any such bird (except in a mew or breeding place) more than *forty days out of season*. PENALTY, 1*l.* per head (1 & 2 Will. 4, c. 32, s. 4).

(b) *Licensed dealer* buying game from a person not

authorized to kill or deal in game; or selling without a board displayed, or elsewhere than at the licensed premises; or affixing a board when not authorized to do so, or to more than one house. PENALTY, 10*l.* (*ib.* s. 28).

- (c) Person *not licensed to kill game* (unless a licensed dealer) *selling* or offering to sell game to anyone; OR, if *entitled to sell game* by virtue of a licence to kill, *selling* or offering it for sale, *except to a licensed dealer*. PENALTY, 2*l.* per head of game (*ib.* s. 25).

Innkeepers selling game to their guests, for consumption on the premises, are specially protected (s. 26); and occupiers may sell ground game killed under s. 4 of the Ground Game Act, 1880. A person "not licensed to kill game" may, *in addition*, be proceeded against for the *excise* penalty.

- (d) Person not licensed to deal in game buying game from anyone except a licensed dealer, or a person at whose house, &c., a board is displayed as above. PENALTY, 5*l.* per head of game (*ib.* s. 27).

Procedure.

Proceedings must be commenced *within three months*, and APPEAL lies to the quarter sessions (ss. 41, 44). In default of payment of the fine, the offender may be imprisoned, with or without hard labour, according to scale (p. 111).

Close Time for Hares.

Selling hares
out of season.

Everyone commits an offence who sells or exposes for sale any *hare* or *leveret* during the months of March, April, May, June, or July (55 Vict. c. 8, s. 2). The Act does not apply to foreign hares imported into this country and here exposed for sale (s. 3).

PENALTY.—FINE, not exceeding 1*l.*, *including* the costs, and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111).

Poaching Prevention Act.

Poaching Pre-
vention Act,
25 & 26 VICT.
c. 114.

A constable or peace officer is authorized *in any highway, street, or public place*, to search any person whom he may have good cause to suspect of *coming from any land* where he has been unlawfully in search of game, woodcock, snipe, rabbits, or the eggs of game, and

“having in his possession any game, &c., unlawfully obtained, or any gun, part of a gun, or nets or engines used for the killing or taking of game, &c.” So, too, the constable may search anyone aiding or abetting the suspected person; and may stop and search any cart or other conveyance in or upon which he has good cause to suspect that any such game, gun, &c., is being carried, and should any such game, &c., or gun, &c., be found, may seize and detain the same, and summon the suspected persons before justices (25 & 26 Vict. c. 114, ss. 1, 2). The hearing may proceed before the justices of any place where the game, gun, nets or engines, were found; and if they are satisfied that the accused obtained the game, &c., by unlawfully going on land in pursuit of game, or used any such gun, net, &c., for unlawfully killing or taking game, or was accessory thereto, the justices may impose a PENALTY not exceeding 5*l.*, and, in default of *payment*, imprisonment, with or without hard labour, according to scale (p. 111). The game, eggs, gun, nets, &c., are *forfeited* on conviction, and the court must give a written direction for the same to be sold or destroyed, and the proceeds applied with the penalty (*ante*, p. 204). If no conviction takes place, the game, eggs, gun, &c., or the value thereof, must be restored to the person from whom they were seized. Proceedings must be commenced within three months; and appeal lies to quarter sessions (s. 6).

Penalty.

The game, &c., must be found by the constable on the person of the accused *in the highway or public place* (*Clarke v. Crowder* (b); *Turner v. Morgan* (c)). But if the game, gun, &c., is visible to the eye of the constable, an actual search of the person is not necessary to give jurisdiction to seize (*Hall v. Knox*) (d). There must, however, be a *seizure* by the constable; and that seizure must take place in the highway or public place, unless, indeed, the suspected person, immediately after the search, escapes from the highway, and is at once pursued, and the seizure forthwith effected (*Lloyd v. Lloyd*) (e).

Decisions on the statute.

- (b) (1869) L. R. 4 C. P. 638; 38 L. J. M. C. 118; 17 W. R. 857.
- (c) (1875) L. R. 10 C. P. 587; 44 L. J. M. C. 161; 23 W. R. 659.
- (d) (1864) 33 L. J. M. C. 1; 9 L. T. 380.
- (e) (1885) 14 Q. B. D. 725; 53 L. T. 536; 49 J. P. 630.

Poaching
Prevention
Act—*contd.*

On the hearing of the summons, direct proof that the defendant was upon any land, or that game was actually killed by him, is not necessary; but guilt may be inferred, *e.g.*, from the fact that the net was wet, and showed that it had been used for the purpose of killing game (*Jenkin v. King*) (*f*). The justices must, however, have before them such evidence as leads clearly to the inference that the offence has been committed (see *Evans v. Botterill* (*g*); *Lawley v. Meyricks* (*h*); *sed cf.* the vague evidence accepted in *Stowe v. Marjoram* (*hh*)).

If, after a seizure under this Act, the constables seek to use the possession of the game, eggs, gun, &c., *for any purpose not contemplated by the statute*, they lose the benefit of the protection of the Act, and the seizure becomes an *unlawful act by relation*: as where, after a seizure of game eggs, proceedings were taken and penalties imposed under s. 24 of 1 & 2 Will. 4, c. 32, which gives no power to seize; see *ante*, p. 501 (*Stowe v. Benstead*) (*h₃*).

Ground Game Acts, 1880, 1906.

Ground Game
Act, 1880.

Except under leases in force at the date of the passing of the Act of 1880, every occupier of land has, as incident to and inseparable from his occupation of the land, the right to kill and take *ground game, i.e.*, hares and rabbits, concurrently with any other person who may be entitled to kill and take ground game on the same land (43 & 44 Vict. c. 47, ss. 1, 3). There are, however, some restrictions on the exercise of this right by the occupiers of *moorlands* and certain uninclosed lands, and provision is made for special agreements for the joint exercise of such right (see s. 1 (iii.) of the Act last cited and s. 2 of the Act of 1906 (6 Edw. 7, c. 21)). The privileges conferred by the Acts attach to one *in occupation of his own land*, even although the right of sporting has been parted with by his predecessors in title (*Anderson v. Vicary* (*i*)). "I think," said *Romer, L.J.*, "the Act contemplates all

(*f*) (1872) L. R. 7 Q. B. 478; 41 L. J. M. C. 145; 26 L. T. 428.

(*g*) (1864) 33 L. J. M. C. 50; 8 L. T. 272.

(*h*) (1887) 51 J. P. 502.

(*hh*) (1909) 73 J. P. 498; 101 L. T. 569.

(*h₃*) [1909] 2 K. B. 415; 78 L. J. K. B. 837; 53 S. J. 543; 73 J. P. 370; 101 L. T. 38; 25 T. L. R. 546.

(*i*) [1900] 2 Q. B. 287; 69 L. J. Q. B. 713; 83 L. T. 15; 48 W. R. 593.

occupiers of whatever kind, who (by reason of the existence of rights in other persons), in the absence of its provisions, would not have the right of killing ground game." But a mere occupier may kill only by himself or by persons authorized by him in writing, he and one other such person being alone entitled to employ firearms. He may authorize no person to kill save members of his household resident on the land, persons in his ordinary service on such land, and one other person *bona fide* employed by him for reward in the taking and destruction of ground game. (As to what amounts to an employment for reward, see *Bruce v. Prosser* (k).) A reservation in a lease of the exclusive right of sporting may be severed and is void only so far as it purports to divest the occupier of his right to kill and take *ground game*, so that a man shooting *partridges* by permission of the lessee is liable to conviction for game trespass (*Stanton v. Brown*) (l). *Hares* must not be killed on Sunday or Christmas Day (*ante*, p. 503).

Moreover, no person having a right of killing ground game under the Act or otherwise may use *firearms* for the purpose of killing ground game *at night*; and no such person may, for the purpose of killing ground game, employ *spring traps* (except in rabbit holes), nor employ *poison* (43 & 44 Vict. c. 47, s. 6). This section does not, however, apply where an *owner* of land does any of the prohibited acts on his own land (*Smith v. Hunt*) (m); but it has been held that the section does apply to an occupying tenant who, under his agreement, is entitled to the right of shooting and the game (*Saunders v. Pitfield*) (mm).

PENALTY.—FINE, not exceeding 2*l.*, and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111).

As to game and gun LICENCES, see *ante*, p. 502, and *post*, p. 516.

(k) Cited 62 J. P. 466.

(l) [1900] 1 Q. B. 671; 69 L. J. Q. B. 301; 48 W. R. 333; 64 J. P. 326.

(m) (1886) 54 L. T. 422; 16 Cox, 54; 50 J. P. 279.

(mm) (1888) 58 L. T. 108; 16 Cox, 369; 52 J. P. 694.

Offences
under Ground
Game Act,
1880.

GAMING.

It is an *indictable* nuisance to keep a common gaming-house, although such house may be frequented by a limited portion of the public only (as, *e.g.*, the members or subscribers of a particular club), and not by the public at large. Proceedings might be taken under 25 Geo. 2, c. 36, by two inhabitants of the parish (see BROTHELS, *ante*, p. 344), but the usual course is to proceed *summarily* under the Gaming Acts.

GAMING ACT,
1845.

Keeping a
gaming-house.

By the Gaming Act, 1845, a summary remedy is provided against the *owner or keeper* of any *common gaming-house*, or any person *having the care or management* thereof, or any *banker, croupier*, or other person acting in any manner *in conducting the business* of such a house (8 & 9 Vict. c. 109, s. 4). The defendant, before the hearing is commenced, must be given the *OPTION OF TRIAL BY JURY* (*ante*, p. 63).

Penalty.

PENALTY.—FINE, not exceeding 100*l.*, and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111); or, IMPRISONMENT, with or without hard labour, for not more than SIX MONTHS.

APPEAL lies to the quarter sessions (s. 20).

GAMING-
HOUSES ACT,
1854.

Keeping
house for
unlawful
gaming.

It is usually more convenient to proceed under the amending Act of 1854, which provides that—

Every person—being the *owner or occupier*, or *having the use of* any house, room, or place—commits an offence if he opens, keeps, or uses the same for the purpose of *unlawful gaming* being carried on therein.

The *owner or occupier* commits a similar offence if he knowingly and wilfully *permits* the place to be opened, kept, or used for such a purpose. And *any person* commits a like offence if he has the *care or management* of, or in any manner *assists in conducting*, the “business” of a house, room, or place opened, kept, or used for such a purpose (17 & 18 Vict. c. 38, s. 4).

So, too, *any person* commits a like offence who *advances or furnishes money* for the purpose of gaming with persons who frequent a house, room, or place opened, kept, or used for the purpose of *unlawful gaming* being carried on therein (*ib.*).

The defendant must, before the proceedings are commenced, be given the *OPTION OF TRIAL BY JURY* (*ante*, p. 63).

PENALTY.—FINE, not exceeding 500*l.* and costs, and in default of *distress*, imprisonment, with or without hard labour, according to scale (p. 111); *or*, IMPRISONMENT, with or without hard labour, for not more than TWELVE MONTHS. Penalty.

One half the penalty goes to the informer, the other in aid of the poor rate (s. 8): cf. *ante*, p. 204.

APPEAL against a conviction lies to quarter sessions (s. 10).

The object of the legislature in these Acts seems to have been to preserve the penalties which attached to the playing of *unlawful* games *anywhere*, and, further, to prohibit the playing of *any game whatever* (whether lawful or not) *in a common gaming-house* (see per *Hawkins, J.*, in *Jenks v. Turpin*) (*n*). But an isolated instance of unlawful gaming among friends at the house of one of them does not render the occupier of the house liable to the penalties imposed by the Acts (*R. v. Davies*) (*o*). Object of the Acts.

The following are *unlawful* games:—Ace of hearts, pharaoh (or faro), basset, passage, hazard, roulette, all games with dice except backgammon, all games with cards which are not games of *mere* skill, and probably all other *games of chance*. Meaning of "unlawful" games.

It may be observed that if the "business" carried on upon the premises were lawful, a person having the *care or management* of or *assisting in the conduct of the business* (as distinguished from the *owner, occupier, or keeper* of the house) would not be liable to conviction, even if unlawful gaming did take place, unless, indeed, he took a share or part in the illegality (cf. *BETTING, ante*, p. 312). Nor can the players themselves be prosecuted successfully under these Acts unless the circumstances were such as to constitute them "*aiders and abettors*;" but they might possibly be indicted, and may, moreover, be required to find recognizances no more to haunt such gaming-houses or to play at such prohibited games (33 Hen. 8, c. 9, s. 9). The words "*having the use of any house*," have been held to point to a person having the use of a house as a licensee to carry on its business, and Liability of manager.

Liability of players found gaming.

(*n*) (1884) 13 Q. B. D. 505; 53 L. J. M. C. 161; 50 L. T. 808; 49 J. P. 20.

(*o*) [1897] 2 Q. B. 199; 66 L. J. Q. B. 513; 76 L. T. 786.

not to apply to a person merely going in to avail himself of the business which happens to be carried on therein (*Jenks v. Turpin*) (p).

But a man who, *on one occasion*, bought the bank and acted as "banker" at a game of "faro" in a proprietary club, playing against all the other players, was held to have "assisted in conducting the business" of the house for the purpose of unlawful gaming (*Derby v. Bloomfield*) (q).

Automatic
slot machines
in shops.

An automatic machine used in the defendant's shop by his customers was worked in this way:—The operator put 1*d.* in a slot, then pressed and suddenly released a spring, whereupon the 1*d.* fell into one or other of seven compartments. If it fell into the centre compartment the operator received a ticket worth 2*d.*; if into either of two others, the 1*d.* was returned to the operator; while, if the 1*d.* fell into any one of four remaining compartments, it was retained in the machine. The defendant was convicted of using the shop for the purpose of unlawful gaming being carried on therein, it being held that "the chances of the game were not alike favourable to all the players, including among the players the person by whom the game was managed or against whom the other players staked" (see s. 2 of the Act of 1845, cited *infra*, p. 511; *Fielding v. Turner*) (r). "There are," said *Alverstone*, C.J., "four compartments into which the 1*d.* can fall with no return to the person inserting it, as against *one* into which, if the 1*d.* falls, it will enable the person inserting it to receive a ticket of the nominal value of 2*d.*" And in a later case, a conviction in respect of a similar machine was upheld, although (on the assumption that the force and adjustment of the spring was such as to make it an absolutely even chance that the 1*d.* would fall into any one of the compartments) the expectation of the value emerging from the machine was theoretically 1*d.*, *i.e.*, the result, in the long run, of a vast series of experiments by the same customer would be that *neither party would win or lose* (*Thompson v.*

(p) (1884) 13 Q. B. D. at p. 534.

(q) (1904) 91 L. T. 99; 68 J. P. 391; 20 T. L. R. 549.

(r) [1903] 1 K. B. 867; 72 L. J. K. B. 542; 89 L. T. 273; 51 W. R. 543; 67 J. P. 252; 19 T. L. R. 404.

Mason (s) ; see, too, *Roberts v. Harrison* (ss), where either (i.) the player's money was returned to him, or (ii.) it became the property of the owner of the machine, or (iii.) the player received a ball with which he might play again. "I think," said *Jelf, J.*, "that this is unlawful gaming: it is a game in which the chances are not alike favourable to all the players, including the owner of the machine."

Automatic
slot
machines—
contd.

On complaint being made on oath that there is reason to suspect that premises are being used as a *common gaming-house*, a justice may issue a warrant authorizing the entry of the premises by force and the arrest of all persons found therein (8 & 9 Vict. c. 109, s. 3). But if the persons arrested are brought before the court, they would be entitled to insist upon informations being laid in the ordinary course (*Blake v. Beach*) (t). Such persons may be examined as witnesses, but, on making full discovery of the facts within their knowledge, are entitled to a certificate of indemnity (*ib.* s. 9) ; although, as we have already seen, if such persons were merely players, and in no way concerned in the conduct of the house, they are not, in any case liable to punishment under these statutes.

Procedure.

It is specially provided that it shall be *sufficient evidence* that the house was being used as a common gaming-house to prove that it was kept or used for playing at any *unlawful game* ; AND that a bank was kept there by one or more of the players exclusively of the others, or that the chances of any game played therein were not alike favourable to all the players, including amongst them the banker or other person by whom the game was managed, or against whom the other players staked, played, or betted (*ib.* s. 2). In proceedings for keeping a gaming-house, it is not necessary to prove that any person found playing at any game was playing for any money, wager, or stake (*ib.* s. 5). And if cards, dice, tables, or other instruments of gaming used in playing unlawful games are found in a suspected house when entered under a warrant, or about the person of anyone

Evidence.

(s) (1904) 68 J. P. 270 ; 90 L. T. 649 ; 20 T. L. R. 298.

(ss) (1909) 25 T. L. R. 700 ; 73 J. P. 439 ; 101 L. T. 540.

(t) *Ante*, p. 31.

found therein, this circumstance is *primâ facie* evidence of guilt (*ib.* s. 8). So, too, if the constables are obstructed in their entry of the premises; or, if the house is found to be fitted with bolts or other contrivances for obstructing such entry or giving an alarm to the inmates; or, if it is found to be fitted with means or contrivances for unlawful gaming, or for concealing, removing, or destroying instruments of gaming, these facts also serve as *primâ facie* evidence of guilt (17 & 18 Vict. c. 38, s. 2).

Failure of informant to appear.

In case the informant does not appear at the hearing, or if the justices think he has not prosecuted the matter with due diligence, they may authorize another person to proceed in place of the informant, or may issue a fresh summons (17 & 18 Vict. c. 38, s. 9).

Obstructing entry of constable.

Any person who *wilfully obstructs* the entry of a *constable* authorized to enter the suspected premises, or uses any means or contrivance to prevent or delay such entry, commits an offence (17 & 18 Vict. c. 38, s. 1).

The defendant, before the case is heard, must be given the OPTION OF TRIAL BY JURY (*ante*, p. 63).

Penalty for obstruction.

PENALTY.—FINE, not exceeding 100*l.* and costs, or, in default of *distress*, imprisonment, with or without hard labour, according to scale (p. 111); *or*, IMPRISONMENT, with or without hard labour, for not more than SIX MONTHS. APPEAL lies to quarter sessions (*ib.* s. 10).

Refusing name or giving false name.

Any person found on the premises upon such entry commits an offence if he *refuses or neglects to give his name and address* when required to do so by the constable or the justices before whom he is brought, or if, under such circumstances, he gives a false name or address (17 & 18 Vict. c. 38, s. 3).

PENALTY.—FINE, not exceeding 50*l.*, and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111), *or*, IMPRISONMENT, *without* hard labour, for not more than ONE MONTH. APPEAL to quarter sessions (s. 10).

Under 17 & 18 Vict. c. 38, half the penalty goes to the informer and half in aid of the poor rate (s. 8).

CHEATING AT CARDS OR IN WAGERING.

It is an *indictable* misdemeanour (not punishable summarily), by any FRAUD *or* UNLAWFUL DEVICE *or* ILL-PRACTICE, in playing at *cards, dice, or other games, or in*

bearing a "part in the stakes, wagers or adventures," or in *betting* on the sides or hands of other players, or in *wagering* on the event of any game, sport, pastime, or exercise, to win any sum of money or valuable thing. The offender is to be deemed guilty of *obtaining* the money or valuable thing *by a false pretence* with intent to defraud (8 & 9 Vict. c. 109, s. 17). Where a man was enticed into a public-house and then induced to stake his watch and chain on the toss of coins, it was held that the watch and chain were won by "ill-practice" as the result of "wagering on the event of a sport or exercise" (*R. v. O'Connor (u)* ; see *ante*, p. 464).

Cheating at cards, etc

Gaming in Public Places. See VAGRANTS (*post*, p. 929).

Gaining on Licensed Premises. See pp. 331, 624.

GAMBLING IN MARINE INSURANCE.—Persons who effect contracts of marine insurance, without *bonâ fide* interest or expectation of interest, commit an OFFENCE : so also brokers and insurers who act knowingly.

Gambling on loss by maritime perils.

PENALTY. *Fine* of 100*l.*, or *imprisonment* for six months with hard labour, AND FORFEITURE of money received. Option of trial by jury (*ante*, p. 63). Consent of Attorney-General necessary. Appeal lies against order or decision (9 Edw. 7, c. 12). As to venue, see *ib.* s. 1 (vi.).

9 Edw. 7 c. 12.

GAS AND ELECTRICITY.

The Gasworks Clauses Act, 1847 (10 & 11 Vict. c. 15), was in former times usually incorporated into the special Acts of gas companies, while, more recently, the Gasworks Clauses Act, 1871 (34 & 35 Vict. c. 41), was passed, to be construed as one with the previous Act, and to apply to *all* subsequent undertakings of the kind. Certain provisions may be usefully referred to.

Gas rents, including the *hire* and *cost of fixing* meters, &c., are recoverable upon summons before justices, together with costs, including any costs incurred in cutting off the gas (34 & 35 Vict. c. 41, s. 40). These sums are recoverable "in like manner as a penalty," but they are really "civil debts," and are recoverable as such (*ante*, pp. 118, 171). The register of the meter is *primâ facie* evidence of the amount of gas supplied.

Recovery of gas rents.

Or, a justice may issue a summons, to be followed by a distress warrant, for the recovery of the amount proved

(*u*) (1881) 45 L. T. 512 ; 15 Cox, 3 ; 46 J. P. 214.

to be due for gas supplied, together with costs, including any costs incurred in cutting off the gas (*ib.* s. 23).

As to the recovery of arrears from an *incoming* tenant under the Gas Light and Coke Company's Act of 1872, see *Cannon Brewery Co. v. Gas Light and Coke Co.* (x).

Accidental
damage to
pipes or
lamps.

In case pipes or lamps are *accidentally* or *carelessly* damaged, two justices may assess the amount to be paid to the undertakers (10 & 11 Vict. c. 15, s. 20). It appears that it is not necessary for the undertakers to establish negligence, such as it would be essential for them to prove if they chose to seek a remedy by an action of tort (cf. *Burgess v. Morris* (y) and *Ashton v. Eccles Corporation*) (z). The amount is limited to 5*l.*

Communica-
tion with
pipes without
consent, &c.

Any person who lays a pipe to communicate with the undertakers' gas-pipe without their consent, *or* who (when the supply is not ascertained by meter) improperly uses or burns the gas, by enlarging the burners or otherwise, *or* supplies any other person with any part of the gas supplied to him, becomes liable to a

PENALTY not exceeding 5*l.*, and 2*l.* per day during the continuance of the offence; and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111; 10 & 11 Vict. c. 15, s. 18).

It may be mentioned that "gas" is a chattel, and is the subject of larceny, just as water stored in pipes is the subject of larceny (*Perrens v. O'Brien* (a); *R. v. Firth*) (b).

Using un-
stamped
meter.

The regulation, stamping, and inspection of meters is provided for by 22 & 23 Vict. c. 66, and 23 & 24 Vict. c. 146. By the first of these Acts, every person knowingly using an unstamped meter is liable to a penalty of 5*l.*, recoverable as above, and the meter is to be forfeited and destroyed (s. 17).

Injuring
meter, pipes,
&c.

Abstracting
gas.

Any person who wilfully or by culpable negligence injures a gas company's pipes, meters, &c., *or* alters the index of any meter, or prevents it from properly registering, *or* who fraudulently abstracts or uses the gas, is liable to a

(x) [1904] A. C. 331; 68 J. P. 461.

(y) (1897) 77 L. T. 97; 61 J. P. 553.

(z) (1906) 71 J. P. 55.

(a) (1883) 11 Q. B. D. 21; 52 L. J. M. C. 70.

(b) (1869) L. R. 1 C. C. R. 172; 38 L. J. M. C. 54; 33 J. P. 212.

PENALTY not exceeding 5*l.*, payable to the undertakers, in addition to the damage done (34 & 35 Vict. c. 41, s. 38).

Wilfully damaging lamps or extinguishing public lights or wasting any gas is an offence subject to a like penalty (10 & 11 Vict. c. 15, s. 19). Extinguishing lights, &c.

Undertakers who neglect or refuse to supply with gas an owner or occupier entitled to the same, under such pressure as is prescribed, are liable to a Supply of gas.

PENALTY, not exceeding 2*l.*, for each day of default, recoverable as above (34 & 35 Vict. c. 41, s. 36).

Upon the application of not less than five consumers, two justices may (where no gas examiner is appointed by the local authority) appoint a person to enter gasworks and test the illuminating power and purity of the gas. Should the justices (who must not be shareholders) be of opinion that on any day the gas supplied was under pressure, or of less power or purity than prescribed by the statutes, they may order the undertakers to forfeit to the local authority, or persons making the application, a penalty not exceeding 20*l.* (*ib.* s. 36). Illuminating power—testing.

Any summons or warrant may contain several names and several sums (*ib.* s. 42). A justice is not disqualified by reason of his being liable to any gas rent or other charge under the Act (*ib.* s. 46). Procedure.

In all the above cases APPEAL lies to quarter sessions. Appeal.

As to ELECTRICITY see the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), which by s. 12 applies to electricity the provisions of the Gasworks Clauses Act, 1847 (10 & 11 Vict. c. 15), so far as they relate to waste or improper use or to damage to the property of the undertakers. It also applies the provisions of ss. 38—42, 45, 46 of the Act of 1871 (34 & 35 Vict. c. 41), in relation to injuring meters, &c., the recovery of rents for supply and meter rents, and procedure; cf. *ante*, pp. 513—515. Malicious injury to the lines or works, with intent to cut off the supply, is made a statutory felony (s. 22). See also the Electric Lighting Act of 1888 (51 & 52 Vict. c. 12), and the Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19). ELECTRICITY.

As to *stealing* electricity, see LARCENY (p. 667); and as to injuring works with intent to cut off supply of electricity, see MALICIOUS INJURIES (*post*, p. 697).

GUN LICENCE.

Gun licence

Everyone commits an offence who uses or carries a gun, elsewhere than in a dwelling-house or the curtilage thereof (*i.e.*, the garden or inclosure immediately surrounding and adjoining the house), without having in force a licence (33 & 34 Vict. c. 57, s. 7).

“Gun” is defined as including “a firearm of every description, and an air-gun, or any other kind of gun, from which any shot, bullet, or other missile can be discharged” (*ib.* s. 2). As to a gun carried in parts, see s. 8, which provides that, when a gun is so carried by two or more persons in company, each and every one shall be deemed to carry it. A small toy pistol has been held to be a “firearm” (*Campbell v. Hadley*) (*c*).

PENALTY.—FINE, not exceeding 10*l.*, recoverable as an excise penalty (*ante*, p. 448).

Exemptions

The following persons are exempt from penalty:—
(a) Soldiers, volunteers, police, &c., on duty, &c.;
(b) persons licensed to kill game; (c) assistants carrying guns for a person holding a gun or game licence;
(d) persons scaring birds or killing vermin on land in their own occupation, or on the land of another (who holds a gun or game licence) by his order; (e) gunsmiths;
(f) common carriers. The burden of proving that he is exempt lies on the defendant (33 & 34 Vict. c. 57, s. 7).

It has been held that rabbits are not vermin within exception (d) (*The Lord Advocate v. Young*) (*d*).

Refusing to
give name
and address.

An inland revenue officer, or a constable may enter upon any premises other than a dwelling-house or its curtilage, and may demand production of the licence; and if it be not forthcoming, nor a game licence produced, he may require the name and address of the supposed offender. If such name and address be refused, the offender may be apprehended and taken before a justice, and becomes liable to a penalty of 10*l.*, mitigable to not less than one-fourth (but see now *ante*, p. 105, where it is a first offence). The duties and privileges of inland revenue officers in these matters are now transferred to officers of the County Council (*Order in Council*,

(c) (1876) 40 J. P. 756.

(d) (1898) 35 Scotch L. R. 589; 62 J. P. 199.

Oct. 19th, 1908, par. ix.). If the penalty be "not immediately paid, the justice shall commit the offender to hard labour for not exceeding one month, nor less than seven days, or until the penalty be sooner paid" (33 & 34 Vict. c. 57, s. 9; but see now *ante*, p. 111, as to the term of imprisonment in default of payment; and as to the limits of the power of *one* justice, *ante*, p. 12).

As to the power to convict when the original charge is that of *taking, &c., game* without licence, see *ante*, p. 502.

As to PISTOLS, see that title, *post*, p. 765.

HACKNEY CARRIAGES.

Under the Town Police Clauses Act (*post*, p. 771), provision is made for the *licensing* of "hackney carriages," *i.e.*, carriages "used in standing or plying for hire *in any street* within the prescribed distance" (s. 38). The term includes every wheeled carriage which is in fact used from time to time for the purpose of standing or plying for hire in the street, so that a bye-law requiring the number to be exposed is not limited to the periods during which the carriage is actually "standing or plying for hire" (*Hawkins v. Edwards*) (*e*); and such vehicles are liable to duty under the Customs and Inland Revenue Act, 1888, s. 4. The term "hackney carriage" is, for the purposes of certain sections of the Town Police Clauses Act (*viz.*, ss. 37, 40—52, 54, 58, 60—67), extended to include an "omnibus," *i.e.*, a carriage plying for hire by or used to carry passengers *at separate fares*. But an omnibus, starting outside the prescribed distance and bringing passengers within it, is not included if it does not stand or ply for hire within the prescribed distance (52 & 53 Vict. c. 14, ss. 3, 4). Where, however, an omnibus plies between a point within the prescribed distance and a place outside the district, it will not avoid the necessity for a licence by merely charging no fare for a journey within the district (*R. v. Fletcher*; *Ex parte Ansonia*) (*f*). An "omnibus," as defined by the Act last cited, does

Definition.

Meaning of
"omnibus."

(*e*) [1901] 2 K. B. 169; 70 L. J. K. B. 597; 84 L. T. 532; 49 W. R. 487; 65 J. P. 423.

(*f*) (1908) 98 L. T. 749; 6 L. G. R. 583; 72 J. P. 249; 21 Cox, 578.

not include an electric car carrying passengers over a "light railway" (*Yorkshire Electric Tramways v. Ellis*) (g).

"Plying for hire."

If a driver be standing in a place, waiting for his vehicle to be hired, he is "plying for hire." Thus, where a jobmaster rented from a railway company an office and a slip of ground in their station, and on this piece of ground kept unlicensed broughams, &c., standing ready horsed, it was held that the jobmaster and his drivers were rightly convicted of *plying for hire* within the Metropolitan Public Carriage Act (32 & 33 Vict. c. 115); although the drivers had orders not to accept, and did not accept, fares direct, but referred applicants to the office, where a contract was made out by means of a ticket filled in with the hirer's name (*Foinett v. Clark*) (h); and see *Marks v. Ford* (i); *Bateson v. Oddy* (k). And it would be immaterial that the proprietor made no charge but received money from passengers as voluntary contributions (*Cocks v. Mayner*) (l). But where a proprietor, being unable to accommodate a party of nine persons in the cab which he had on the rank, prevailed on them to engage an unlicensed waggonette which he had at his stables, it was held that he had not plied for hire *with the waggonette*. "It is possible," said Channell, J., "that a man might ply for hire with a carriage *without exhibiting it*—by going round touting for customers. But here the appellant was touting for customers for his *licensed carriage*. He did not solicit persons to go in the waggonette in the first instance, so that there was *no plying for hire with the waggonette*" (*Cavill v. Amos*) (m).

Plying without a licence for carriage.

If the proprietor or any person concerned in the keeping, employing, or letting to hire of a carriage permits the same to be used as a *hackney carriage plying for hire* within the prescribed distance (*i.e.*, five miles from the general post office of the district, if no other distance be prescribed), an OFFENCE is committed *unless a licence for*

(g) [1905] 1 K. B. 396; 74 L. J. K. B. 172; 92 L. T. 202; 69 J. P. 67; 21 T. L. R. 163; 53 W. R. 303.

(h) (1877) 41 J. P. 359.

(i) (1881) 45 J. P. 157.

(k) (1874) 43 L. J. M. C. 131; 48 J. P. 451.

(l) (1894) 70 L. T. 403; 58 J. P. 104; 38 S. J. 100.

(m) (1900) 64 J. P. 309; 16 T. L. R. 156.

such carriage *has been obtained* and remains in force. The penalty is 2*l.*, recoverable by *distress*, and, in default, imprisonment, *without* hard labour, according to scale (p. 111; 10 & 11 Vict. c. 89, s. 45).

And should any *driver* be found so plying with an *unlicensed carriage*, or without the *proper number* properly displayed, he incurs a like penalty (*ib.*).

It is to be noted that, under the Town Police Clauses Act, a hackney carriage is *defined* as one “used in standing or plying for hire *in any street*,” and “street” means a public street only and not a private roadway (see *Curtis v. Embery*) (*n*). Indeed, it has been held that “street” did not include a metalled and paved road adjoining the platform of a railway station to which it formed the approach, although there was a public footpath along one side of it. It was accordingly held that the driver of an unlicensed cab, who stood for hire upon a cab rank by the side of, but not on, the public footpath, could not be convicted of plying without licence under the section of the Town Police Clauses Act last cited (*Jones v. Short*) (*o*). Cases under that section, however, must not be confused with such cases as *Clarke v. Stanford* (*p*) or *Foinett v. Clark* (*q*), those being decisions under the Metropolitan Public Carriage Act (32 & 33 Vict. c. 115), which is not restricted in its operation to carriages plying in a *street*; nor with *Bateson v. Oddy* (*q*), decided under an Act which contains *no* definition of “hackney carriage.” So, too, *R. v. Bennett*; *Ex parte Kippins* (*r*), merely decides that “place” within the London Hackney Carriage Act, 1853 (16 & 17 Vict. c. 33), does not mean only a *public* place such as a street, but includes the inclosure of a railway station.

If the hirer refuses to pay the fare, the driver may recover it before one justice, with costs *as a penalty* (10 & 11 Vict. c. 89, s. 66, and 52 & 53 Vict. c. 14, s. 4). But the fare, nevertheless, remains a *civil debt*, and is

“In any street.”

Recovery of fare.

(*n*) *Post*, p. 774.

(*o*) (1900) 69 L. J. Q. B. 473; 82 L. T. 197; 48 W. R. 251; 64 J. P. 247.

(*p*) (1871) L. R. 6 Q. B. 35; 40 L. J. Q. B. 151; 19 W. R. 846.

(*q*) *Ante*, p. 518.

(*r*) [1897] 1 Q. B. 1; 66 L. J. Q. B. 95; 75 L. T. 421; 60 J. P. 791.

recoverable as such (*ante*, p. 118); and the court would have no power to direct that the defendant be imprisoned forthwith in default of payment (*R. v. Kerswill*) (s).

Driver acting
without
licence.

No person may act as driver of a *licensed* carriage without having himself obtained a *licence*, nor may the proprietor employ an *unlicensed* driver, under a PENALTY of 1*l.* (10 & 11 Vict. c. 89, s. 47).

Other
offences.

It is, moreover, an OFFENCE for (a) the driver, without reasonable excuse, to refuse, when standing on a stand or in a street, to drive a fare to any place within the prescribed distance; or (β) the proprietor or driver to demand more than the sum agreed though less than the legal fare, or to take a greater fare than allowed by the bye-laws; or (γ) the driver to refuse to carry the number of passengers for which the carriage is licensed. The PENALTY in each case is 2*l.*, recoverable as above (ss. 52, 53, 54, 58).

No agreement to pay more than the legal fare is binding, and any sum paid beyond the proper fare may be recovered before a justice. The driver would also be liable to a PENALTY of 2*l.* for the exaction (s. 55). If the driver leave the carriage in a street, or place of public resort or entertainment (whether it be hired or not), "without someone proper to take care of it," a constable may take it away, while the driver becomes liable to a PENALTY of 1*l.* and to pay the expenses. In default of payment, the carriage, &c. "shall be sold by order of the justice" (s. 62).

Bye-laws.

There are a number of other offences relating to the hiring and user of hackney carriages which are enumerated in "Oke's Magisterial Synopsis," 14th edit. pp. 516, 518. As to the power to make BYE-LAWS fixing stands, fares, &c., see 10 & 11 Vict. c. 89, s. 68; and as to bye-laws in respect of omnibuses, see 52 & 53 Vict. c. 14, s. 4.

The provisions of the Town Police Clauses Act, 1847, with respect to HACKNEY CARRIAGES are incorporated with the Public Health Act, 1875 (38 & 39 Vict. c. 55, s. 171).

(s) [1895] 1 Q. B. 1; 64 L. J. M. C. 70; 71 L. T. 574; 43 W. R. 59; 59 J. P. 342.

HAWKERS AND PEDLARS.

Hawkers.

A hawker is required to take out an *excise licence* to entitle him to carry on his trade. It is granted on production of a certificate of fitness signed by a justice of the place where the hawker resides, or by certain other persons specified in the statute.

The term "hawker" includes any person who travels *with a horse or other beast of burden*, and goes from place to place or to other men's houses carrying to sell, or exposing for sale, any goods, wares, or merchandize, or carrying or exposing samples of goods, wares, or merchandize to be afterwards delivered. It, moreover, includes any person who travels *in any fashion* to a place in which he does not usually reside or carry on business, and there sells or exposes for sale any goods, wares, or merchandize at any house, shop, room, booth, stall, or other place hired or used by him for that purpose (51 & 52 Vict. c. 33, s. 2). If a man go round with a horse and van to deliver goods in pursuance of a previous contract of sale, of course, he would not be hawking. So, if he were to deliver goods on approval in pursuance of previous orders to send such goods on approval. But, if he were to take goods about to find customers for them he would not escape liability by calling only on persons named in a list prepared by canvassers, and containing the names of those who were likely to become purchasers (*per cur.* in *Holland v. Hall*) (t). The Act, moreover, extends to a shopkeeper who habitually travels with a horse and cart carrying a cask of oil and calls at customers' houses in compliance with their request, and there delivers oil without having received previous orders for any specified quantities (*O'Dea v. Crowhurst*) (u). And the High Court in Scotland supported the conviction of an industrial society (with a place of business at Glasgow) whose manager travelled with a number of salesmen to Hamilton, where goods were sold for three days in a hall

Meaning of
"hawker."

(t) (1902) 86 L. T. 355 ; 50 W. R. 525 ; 66 J. P. 424.

(u) (1899) 68 L. J. Q. B. 655 ; 80 L. T. 491 ; 63 J. P. 424

hired for the purpose (*Co-operative Drapery, &c., Ltd. v. Bligh*) (x).

Acting as
hawker with-
out licence,
&c.

If any person acts as a hawker *without a licence*, or omits to *produce his licence* to any person on demand, he commits an offence (*ib. s. 6*). So, too, if a person having no licence describes himself as a “licensed hawker,” or trades under colour of a licence granted to any person other than his master (*ib. s. 5*).

PENALTY.—FINE, not exceeding 10*l.*, recoverable as an *excise* penalty (see *ante*, p. 448).

And see *infra* (p. 523) as to the power of imprisonment for non-payment of the penalty in certain cases.

Forging
certificate of
fitness.

The PENALTY for forging a certificate of fitness for the purpose of procuring a licence, or for making use of a licence so procured is 50*l.* (51 & 52 Vict. c. 33, s. 4 (ii.)).

Exemptions.

The following classes of persons are, however, *exempt* from the necessity of taking out a licence:—

- (i.) Sellers of “*victuals*,” a word which extends to everything that constitutes an ingredient in any food consumed by man.
- (ii.) Commercial travellers, or other persons, selling or seeking orders for goods to or from dealers therein, *who buy to sell again*.
- (iii.) The *makers* of any goods, or their servants, &c., usually residing with them, selling or seeking orders for goods manufactured by such makers.
- (iv.) Wholesale traders in and persons selling *coal* by retail.
- (v.) Persons selling or exposing for sale goods or merchandize in a public market or fair legally established (*ib. s. 3*). The exemption is limited to sales on the days properly fixed as market days (cf. 64 J. P. p. 211; and see title MARKETS AND FAIRS, *post*, p. 706).

Printed papers “licensed by authority” may also be freely sold.

Exceptions.

Hawkers, however, may not hawk GUNPOWDER (*ante*, p. 453), nor deal in SPIRITS or other intoxicants (43 & 44 Vict. c. 24, s. 146), nor hawk TOBACCO or SNUFF (5 & 6 Vict. c. 93, s. 13). As to PETROLEUM, see *post*, p. 763.

Omitting to
use descrip-
tion as

A hawker must place his name and the words “licensed

hawker" legibly on every box, *package*, &c., and on the *vehicles* used for the carriage of his goods, on any *handbills* he distributes, and on the *rooms* used by him for sale. If he neglects this duty, he incurs a PENALTY of 10*l.* recoverable as above (51 & 52 Vict. c. 33, s. 5). "licensed hawker."

So, too, if he lends his licence to any other person; though the servant of a licensed hawker may use his master's licence, and trade with it for his master's benefit (*ib.* s. 5).

An officer of the inland revenue, or a constable, may arrest any person *hawking without a licence*, or *omitting to produce his licence*, and may convey the offender before a justice, who may convict and impose a penalty, and, in default of immediate payment, the defendant may be committed to prison, with or without hard labour, for a term not exceeding one month (*ib.* s. 6 (iii.)). Power to apprehend offenders.

But as to the limits of the power of *one* justice, see *ante*, p. 12, and as to the scale of imprisonment, see *ante*, p. 111.

Pedlars.

The term "PEDLAR" includes any hawker, petty-chapman, tinker, mender of chairs, or other person, who, *without any horse or other beast of burden*, travels and trades *on foot*, and goes FROM TOWN TO TOWN, OR TO OTHER MEN'S HOUSES, carrying to sell, or exposing for sale, any goods, wares, or merchandize, *or* procuring orders for goods, &c., *immediately* to be delivered, *or* selling or offering for sale his *skill in handicraft* (34 & 35 Vict. c. 96, s. 3). Meaning of "pedlar."

In one case where ladies had purchased dress materials, and carried the dresses about in baskets for sale, the profits being devoted to charitable purposes, it was held that the ladies were not "pedlars" (*Gregg v. Smith*) (*y*).

No person may act as a pedlar unless he is above seventeen and holds an annual *certificate* from the chief officer of police of the district in which he has resided for one month preceding the application: this certificate (for which the fee is 5*s.*) has practically the same effect as a hawker's licence. If the certificate is refused, the applicant may, on giving notice within a week, APPEAL

(*y*) (1873) L. R. 8 Q. B. 302; 42 L. J. M. C. 121; 37 J. P. 679.

against the refusal to a court of summary jurisdiction in the district (*ib. s. 15*).

Acting as
pedlar with-
out certificate.

(a) Any person who acts as a pedlar *without a certificate* commits an offence (*ib. s. 4*).

PENALTY.—*First offence*.—FINE, not exceeding 10s., and, in default of *distress*, imprisonment, without hard labour, according to scale (p. 111).

Second offence.—FINE, not exceeding 1l., recoverable similarly.

Exemptions.

The following classes of persons are, however, exempt from the necessity for taking out a certificate:—

- (i.) Sellers of “victuals,” a word which extends to everything that constitutes an ingredient in any food consumed by man.
- (ii.) Commercial travellers, or other persons, selling or seeking orders for goods to or from dealers therein, *who buy to sell again*.
- (iii.) Persons selling or seeking orders for *books* under written authority from the publishers.
- (iv.) Persons selling or exposing for sale goods or merchandize in any public mart, market, or fair legally established (34 & 35 Vict. c. 96, s. 23). And see *post*, p. 706.

Production of
certificate.

A pedlar is bound at all times, on demand, to produce his certificate to a justice, a constable, or any person to whom he offers his goods for sale, or in whose private grounds or premises he may be found; and, if he cannot or will not produce it, he may be forthwith conveyed before a justice (*ib. s. 18*). So, if he seeks to prevent a constable from examining his pack.

The following offences are specially dealt with, the penalties being recoverable as in the case of (a):—

Other
offences.

- (b) Refusing to produce and show certificate and allow it to be copied. PENALTY, 5s. (*ib. s. 17*).
- (c) Lending, transferring, or borrowing certificate. PENALTY, 1l. (*ib. ss. 10, 11*).
- (d) Refusing to allow pack to be opened, or preventing constable from opening it. PENALTY, 1l. (*ib. s. 19*).
- (e) Making *false* representations with a view to obtaining a *certificate*, or *forging* or producing a forged certificate. PENALTY, 2l. (*ib. s. 12*; 44 & 45 Vict. c. 45). For a *second* offence, instead of or in addition to the penalty, the offender may be

imprisoned for SIX MONTHS with hard labour, and, therefore, the defendant must be given the option of trial by jury. As to the procedure to be adopted, see *ante*, p. 65.

If a pedlar is convicted of any offence under 34 & 35 Vict. c. 96, the court must indorse the conviction on the certificate (s. 14); and the court before which a pedlar is convicted of any offence, under any statute, *may*, if it is thought fit, deprive the pedlar of his certificate (s. 16). If the pedlar is convicted of begging, the court is *required* so to deprive him (*ib.*).

Indorsement
and forfeiture
of certificate.

A pedlar is in no way exempt from the operation of the Vagrant Act by reason of his holding a certificate (s. 13); and, upon summons, the certificate may be taken away, if the pedlar fail to satisfy the justice that he is in good faith acting as such (s. 16). And see *post*, p. 925.

HIGHWAYS.

In the absence of special circumstances casting a liability to repair (by immemorial custom, statute, or otherwise) on a separate district or on some particular person or body corporate, every parish is bound at common law, and irrespective of any statutory obligation, to keep all the highways running through it in a state of good repair. In order, however, to fix a parish with the repair of a highway created since 1836, it is necessary for the intending dedicator to go through certain formalities prescribed by the Highway Act, 1835, with a view to obtaining a certificate of justices who will judge of the utility of the road (s. 23); or (if the road happens to lie in an urban district) the Public Health Act, 1875 (s. 152) will regulate the procedure. But, in the case of a district where Part III. of the Public Health Acts Amendment Act, 1890, has been adopted, the formalities are prescribed by s. 41 of that Act; while, if the Private Streets Works Act, 1892, is in force the procedure is regulated by ss. 19, 20 of that Act. Although these formalities may not have been complied with, or the road deemed to be of sufficient utility, or in a fit condition to be taken over by the public, it may, nevertheless, have been so dedicated to and used by the public as to have become a highway, and yet not a highway repairable at the expense of the inhabitants at large.

Repair of
highways.

Surveyors of
highways.

In order to secure the efficient performance of the duty of repair, surveyors of highways were for many years chosen in every parish; but now, in every *urban* district, the district council, under the Public Health Act, exclusively execute the office of surveyor of highways, and exercise all the powers which would otherwise have belonged to the vestry of any component parish. So, too, under the Local Government Act, 1894, in every *rural* district, the district council now possess all the powers, execute all the duties, and incur all the liabilities of any highway authority within the ambit of their jurisdiction, unless the transfer of such powers, &c., has been expressly deferred by order of the county council (56 & 57 Vict. c. 73, ss. 25, 82). The roads which are known as "main" roads are, however, maintained and repaired throughout a county by the county council, except such as may have been retained by an urban authority, or unless some special arrangement has been made between the county council and a district council (51 & 52 Vict. c. 41, s. 11).

Recovery of
highway
rates.

The body exercising the powers of surveyors of highways is required to make and levy a rate for the purpose of carrying the Highway Acts into execution. It is to be levied on all property liable to be rated to the relief of the poor, and upon the basis of the poor rate valuation lists (cf. 45 & 46 Vict. c. 27). The point is not free from doubt, but it would seem that the Summary Jurisdiction Acts do not affect or apply to proceedings for the recovery of highway rates, which are recoverable in the same way as poor rates (*post*, pp. 777 *et seq.*). A distress warrant may, therefore, issue in respect of such rates, as before the Summary Jurisdiction Act, 1879 (*R. v. Price*) (z). The rate is signed by the surveyor, allowed by two justices, and published like a poor rate; but, where proceedings are taken before justices for the non-payment of a *highway* rate, the mere production of the book purporting to contain such rate is no evidence of the due publication of such rate (*Bird v. Adcock*) (a). As to the sufficiency of the publication of the notices in the highway parish, without proof of posting on the door of the

(z) (1880) 5 Q. B. D. 300; 49 L. J. M. C. 49; 42 L. T. 439.

(a) (1878) 47 L. J. M. C. 123; 42 J. P. 613.

church of the parish of which, for poor law purposes, the highway parish formed a part, see *R. v. Wolferstan* (b).

In the event of a ratepayer's inability, through poverty, to pay the rate, he may be discharged therefrom by justices (see 5 & 6 Will. 4, c. 50, s. 32). In the case of a rate made by an URBAN authority, it is *not* necessary to obtain the allowance of justices or verify accounts before them (38 & 39 Vict. c. 55, s. 217); so that the rates made by such an authority would appear to be "made under" the last-cited Act, and, if so, would be recoverable in the manner provided by s. 256, as set forth *post*, p. 805.

Special sessions for highway purposes were formerly held under the provisions of the Highway Act, 1835, when yearly accounts of highway rates were laid before the court; but now justices assembled in petty sessions at their usual place of meeting may exercise any jurisdiction which they are authorized under the Highway Acts, or any of them, to exercise in special sessions (27 & 28 Vict. c. 101, s. 46).

Special sessions no longer necessary.

It is a common law misdemeanour, punishable on indictment, for persons charged with the repairs of the highways (*i.e.*, in most cases the inhabitants of the parish) to permit the same to be out of repair. But where *the liability to repair* and the fact that *the road is a highway are both admitted*, a summary procedure is provided by the Highway Act, 1835. Thus, if information on oath be given to any justice that a highway is out of repair, he must issue a summons to the district council, or body chargeable to the repair, to appear at some sessions therein named. The justices at such sessions are required either to appoint some competent person to view the highway and report to them at some subsequent sessions which are then and there to be fixed, and at which the party summoned is to be directed to attend, or to fix a day when they or any two of them will view the highway themselves. At the subsequent sessions, if it appear from the report or the view that the highway is not in thorough and effectual repair, and if it is not denied that the spot is a highway and that the party summoned is chargeable with the repairs, the justices

Proceedings where highway is out of repair.

(b) [1893] 2 Q. B. 451; 62 L. J. M. C. 148; 69 L. T. 429; 58 J. P. 133.

Order to
repair

may convict such party in a penalty not exceeding 5*l*. They *must*, moreover, make an order on such party to repair, and by this order they are required to limit and fix the time for the completion of the repairs (5 & 6 Will. 4, c. 50, s. 94).

On default being made in complying with the order within the time limited, the justices are to make a *second order*, naming and appointing some person to whom the party in default shall forfeit a sum of money fixed by the order, and equal in amount to the sum which they judge necessary on the evidence before them to repair the highway. This penalty, which is recoverable on summary process by distress and imprisonment, is to be applied to the repairs.

These orders, if there are more persons than one liable, must specify the proportions which each party shall bear; but no order can be made upon a person who has not been summoned to appear.

Proceedings
where
liability to
repair is
denied.

If, however, the spot is an *admitted highway* and appears to be out of repair, but the party summoned *denies liability*, the justices cannot convict or make such orders; they are bound to direct an *indictment* to be preferred against the persons alleged to be liable. On the other hand, if the party summoned *bonâ fide* denies the *locus in quo* to be a highway, the justices have no jurisdiction at all, and should simply dismiss the summons, leaving the complainant to his common law rights; for the statutes only apply where the road is out of repair, and is an *admitted highway* (*R. v. Farrer*) (c).

Where *locus
in quo* is
denied to be
a highway.

Procedure
under the
Highways
and Loco-
motives
(Amendment)
Act, 1878

Modern alterations in the constitution of highway authorities render proceedings by way of indictment against "inhabitants" in most cases highly inconvenient. The better course is usually to set the county council in motion under the Highways and Locomotives (Amendment) Act, 1878. The procedure under the last-cited Act is beyond the scope of this work, but it may be stated that upon complaint being made to the county council that any highway authority has made default, the council must, if satisfied, after due inquiry and report by their surveyor, that the complaint is well founded, make an order for the carrying out of the necessary repairs; and, if the

order is not complied with, the council may appoint some person to do the work and charge the defaulting authority with the expenses. If, however, the highway authority dispute liability, they may, by notice, decline to comply with the requisitions of the order until the liability to repair has been determined. Thereupon the council must either abandon their order or submit the question to a jury at the assizes by preferring a bill of indictment against the *authority* alleged to be in default (*R. v. Wakefield*) (d).

Diversion and Closing of Highways.

Whenever the parish or district council deem it expedient that any existing highway should be stopped up or diverted, or when any private individual, with the approval of the council, desires that this should be done, application must be made to two justices to *view* the place (5 & 6 Will. 4, c. 50, s. 84). But no public right of way can be stopped up or diverted in an urban district except with the consent of the district council, nor in a rural parish except with the consent of the parish council and of the district council (38 & 39 Vict. c. 55, s. 144; 56 & 57 Vict. c. 73, s. 13). The view of the highway must be made by the justices jointly, with the assistance of a properly verified plan, and their certificate must be the result of their own personal inspection, and not founded upon information derived from other people (*R. v. Wallace*) (e). The point for them to decide, when the diversion of a highway is in question, is whether the proposed new road is nearer or more commodious to the public (see *R. v. Phillips*) (f). But it is not sufficient *merely* to find that it is "nearer." Should they find that it is nearer, they are to set forth by how much nearer; and should they consider it to be more commodious, they are to state the reason why. If the old highway is to be abandoned in favour of the new road, there seems to be no necessity to give a reason for its being unnecessary. After these preliminaries, should

Diverting and closing highways.

The view by and the certificate of justices.

(d) (1888) 20 Q. B. D. 810; 57 L. J. M. C. 52; 52 J. P. 422.

(e) (1879) 4 Q. B. D. 643; 40 L. T. 518; 43 J. P. 493.

(f) (1876) L. R. 1 Q. B. 648; 35 L. J. M. C. 217.

the owner of the land, through which, in the case of a diversion, the new highway is to pass, express his consent, certain proceedings are to be taken, terminating (should no appeal intervene, or should such appeal be dismissed) in an order at quarter sessions to stop up or divert such highway, and to purchase the land (if necessary) for the new route. The new road, when constructed, will continue for ever a public highway, and the parish or party liable to repair the old one will be answerable for the repair of the new, without reference to its parochial locality (5 & 6 Will. 4, c. 50, ss. 84—93). The plan which accompanies the certificate to be enrolled at quarter sessions must “particularly” describe the old and new roads “by metes, bounds and admeasurement” (*R. v. Surrey JJ.*) (g).

Discontinu-
ance of repair
of unneces-
sary high-
ways.

Without being actually stopped up, a highway may cease to be repairable by the inhabitants at large. Thus, if any authority liable to keep any highway in repair be of opinion that so much of it as lies within any parish situate in a petty sessional division is *unnecessary* for public purposes, it may apply to the court of such division to *view* by two or more of the justices; and, should the court be of opinion that the application ought to be proceeded with, it may (after certain notices and inquiries provided by the Act) declare by its ORDER that such highway is unnecessary for public use, and ought *not to be repaired at the public expense* (41 & 42 Vict. c. 77, s. 24). An APPEAL against the order lies to quarter sessions; and, in case of a change of circumstances, the quarter sessions, may, at any time, be moved to direct that the liability to repair shall revive (*ib.*; see, too, 27 & 28 Vict. c. 101, s. 21).

The consent of the parish council (as well as that of the district council) is now also necessary when the highway is in a rural parish (56 & 57 Vict. c. 73, s. 13).

Widening
roads and
making
temporary
roads.

Two justices, upon view, may order any highway, not sufficiently wide, to be *widened* up to *thirty feet*, the power to be exercised under certain restrictions. The justices may, too, empanel a jury, at quarter sessions, to assess damages occasioned by the widening, and provision

(g) [1908] 1 K. B. 374; 77 L. J. K. B. 167; 98 L. T. 42; 72 J. P. 53; 6 L. G. R. 98.

is made as to minerals and timber under and growing upon the land taken, and for the raising of funds for payment of compensation (5 & 6 Will. 4, c. 50, ss. 82, 83; 38 & 39 Vict. c. 55, s. 154). Whilst an existing highway is being widened or repaired, the surveyors of highways may, under certain circumstances, cause a temporary road to be made through adjoining land, making such recompense to the owner as justices may think reasonable (5 & 6 Will. 4, c. 50, s. 25).

Various Offences, &c., relating to Highways.

If surveyors lay or cause to be laid any heap of stones or other things on the highway and allow it to remain there at night without reasonable precautions against danger, an offence is committed (5 & 6 Will. 4, c. 50, s. 56). But surveyors will not be liable if they give proper instructions to their subordinates, and are not aware that their orders have been disregarded (*Hardcastle v. Bielby*) (*h*).

Surveyors leaving dangerous heaps on highway.

PENALTY.—FINE, not exceeding 5*l.*, and, in default of distress, imprisonment, with or without hard labour, according to scale (p. 111).

So, too, if surveyors have any personal share or interest in any contract for materials provided for the repair of highways, or in any work in connection therewith, or sell materials, &c., without a licence from two justices, they are liable to a PENALTY of 10*l.*, recoverable similarly (*ib.* s. 46). A rural district councillor is not a "surveyor" within this section (*Buckley v. Hanson*) (*i*).

Surveyors interested in contracts.

If the surveyors or anyone in their employ neglect to fence off holes made in getting materials, the PENALTY is 10*s.* and costs for each default (*ib.* s. 55); and if surveyors or assistant surveyors neglect their duty in anything required by the Act for which no particular penalty is imposed, the PENALTY is 5*l.*, recoverable as above (*ib.* s. 20).

Neglect of duty by surveyors.

In the event of any obstruction to a highway from snow, or the falling-in of banks at the sides, &c., it is the

(*h*) [1892] 1 Q. B. 709; 61 L. J. M. C. 101; 66 L. T. 343; 56 J. P. 549.

(*i*) (1898) 77 L. T. 664; 62 J. P. 119.

duty of the surveyors, from time to time, and within twenty-four hours after notice from a justice of the county, to clear the way (*ib.* s. 26).

Obtaining materials for road repair.

Without payment for materials.

For the purpose of executing necessary repairs, surveyors may (*without paying for the materials* but upon making *compensation*, to be assessed by justices in petty sessions, for all *damage* done to the lands of any person by taking them away) (a) *dig gravel*, sand, stone, or other materials in any *waste land*, *common ground*, *river* or *brook* in the parish (or, if necessary, in any other parish having more than sufficient for its own wants); (β) *gather stones* lying upon *any lands* within the parish. But stones must not be so gathered without the landowner's consent, except upon *licence* granted by justices in petty sessions after hearing the owner's grounds of objection (*ib.* s. 51). There must be a month's notice of intention to apply for such a licence, and it must be preceded by a summons to show cause why it should not issue (*Alresford v. Scott*) (k).

Commons Act.

So far as *commons* within the *Commons Act*, 1876 (39 & 40 Vict. c. 56, s. 20), or *commons regulated by the scheme of a district council under the Commons Act*, 1899 (62 & 63 Vict. c. 30, s. 8), are concerned, the gravel, &c., cannot be taken without the consent of the persons having the regulation or management of the common affected, or, failing such consent, without an *order* of justices. The justices may make or refuse an order as they may think fit, or may make an order prescribing the conditions under which the right is to be exercised (*Conservators of Hayes Common v. Bromley Rural District Council*) (l).

Making full compensation.

If it is necessary to have recourse to the *digging of materials* in *inclosed* lands, the work can only be carried out after obtaining a *like licence*, and *upon making compensation*, to be ascertained by justices in petty sessions, for all the *materials* that are taken and the *damage* that is done by the removal. The licence may be granted in respect of any lands within the parish (or under certain limitations elsewhere) except those of a strictly private

(k) (1881) 7 Q. B. D. 210; 45 J. P. 619.

(l) [1897] 1 Q. B. 321; 66 L. J. Q. B. 155; 76 L. T. 51; 61 J. P. 104.

character, *e.g.*, gardens, parks, paddocks, inclosed plantations, &c.; but it should not authorize an indefinite amount of digging, only so much as is justified by the extent of repairs actually in contemplation when it is granted (*Earl Manners v. Bartholomew*) (*m*). The licence must be *pro re nata*; and one which authorized digging for "a period of five years," without regard to the absolute necessities of the case, was held to be invalid (*R. v. Bradford*) (*n*). The question whether the land is a *park*, &c., within the exempting clause is, of course, for the decision of the justices; yet such decision may be reviewed on *certiorari*, for the inquiry on this point is *not in the course of the exercise* of their jurisdiction, but *as a preliminary* to it. A court cannot give itself jurisdiction by a wrong decision on a point, collateral to the merits of the case, upon which the limit to its jurisdiction depends (*ib.*; *cf. ante*, p. 26; 5 & 6 Will. 4, c. 50, ss. 51, 53, 54). Surveyors may also make and keep open all such ditches and drains as may be necessary through any lands adjoining the highway upon payment for damage done, to be ascertained by justices in sessions (*ib.* s. 67). And if the owner of the land, or any other person, interfere with such ditches and drains, he is liable to make good all expenses incurred in reinstating them, and to forfeit three times that amount by way of penalty (*ib.* s. 68).

Surveyors
may make
ditches and
drains.

Every unauthorized obstruction of a highway is *prima facie* a nuisance at common law, and is indictable as such; but it is further specially provided that, if any person encroaches by making any building, hedge, ditch, or other fence, *on any carriage-way within fifteen feet of the centre*, the surveyor must get rid of the encroachment, and the offender is liable to pay all the expenses incurred, and is also liable to a

Nuisances to
highways.

Encroach-
ments.

PENALTY, not exceeding 2*l.*, and, in default of *distress*, imprisonment, with or without hard labour, according to scale (p. 111; 5 & 6 Will. 4, c. 50, ss. 63, 69; see also the wider provisions of 27 & 28 Vict. c. 101, s. 51, which extend to encroachments on the *side* of a carriage-way).

The offence is not "continuing," so that proceedings

(*m*) (1879) 4 Q. B. D. 5; 48 L. J. M. C. 3; 43 J. P. 55.

(*n*) [1908] 1 K. B. 365; 77 L. J. K. B. 475; 98 L. T. 620; 72 J. P. 61; 6 L. G. R. 333.

Trees and
hedges on
or near
carriage-
ways.

must be commenced within six months of the completion of the obstruction (*Coggins v. Bennett*) (o).

No tree, shrub, or bush may be planted in a *carriage-way* or within *fifteen feet* of the centre thereof; and, if a tree, &c., is so planted, the owner or occupier of the land must, within twenty-one days after notice from the surveyor, remove the same under a PENALTY of 10*s.*, recoverable by distress, as above (5 & 6 Will. 4, c. 50, s. 64); while if any such way be injuriously overshadowed by hedges or trees (except trees planted for ornament, or for shelter to a house, &c.), or if any obstruction be caused by a hedge or tree, the owner may be summoned to show cause why such hedges and trees were not lopped, or why such obstruction should not be removed. In the event of non-compliance with an ORDER to lop or remove, the owner (or the actual occupier: see *Woodward v. Billericay Highway Board*) (p) is liable to a PENALTY of 40*s.*, recoverable in like manner; and the surveyor, at the expense of the party in default, may remove the obstruction (*Bullen v. Wakeley*) (q), or (with certain limitations as to the time of pruning, &c., as to timber trees growing in hedges) lop the trees and hedges (ss. 65, 66). The meaning of "lop" in these sections is to cut off the branches laterally, and justices cannot direct the cutting off of the tree tops (*Unwin v. Hanson*) (r).

Sinking pits,
erecting
engines, &c.

It is an offence to sink a pit or erect a steam-engine within TWENTY-FIVE *yards*, or to erect any windmill within FIFTY *yards*, of the carriage-way, unless so screened from the road as not to be dangerous to passengers, horses, or cattle. It is, too, an offence to make fires for burning ironstone, limestone, bricks, or clay, or for making coke, within FIFTEEN *yards* of a carriage-way, unless so screened (5 & 6 Will. 4, c. 50, s. 70).

Threshing
engines.

This provision is not to be taken to prohibit the use of an unscreened locomotive steam-engine, or machinery attached thereto, *for the purpose of ploughing or of threshing*, if a person is stationed on the road to signal the engine-driver on the approach of a horse, and to assist

(o) (1877) 2 C. P. D. 568; 43 J. P. 220.

(p) (1879) 48 L. J. Ch. 535; 43 J. P. 224.

(q) (1898) 77 L. T. 689; 62 J. P. 166.

(r) [1891] 2 Q. B. 115; 60 L. J. Q. B. 531; 55 J. P. 662; 39 W. R. 587.

the person in charge of such horse (28 & 29 Vict. c. 83, s. 6; 57 & 58 Vict. c. 37, s. 2).

PENALTY.—FINE, not exceeding 5*l.* per day, and, in default of *distress*, imprisonment, with or without hard labour, according to scale (p. 111).

It is, too, an offence, punishable by fine of 2*l.*, in addition to the amount of any damage occasioned, (recoverable as above)—(a) to tether any horse, sheep, or cattle on the highway; (b) to injure a highway, or the hedges or fences thereof; (c) wilfully to obstruct the passage of any footway; (d) wilfully to pull up, remove, or damage posts or stones fixed by the surveyor; (e) to damage or deface bridges or milestones; (f) to play at football or other games to the annoyance of any passenger; (g) to make a bonfire, wantonly fire off a gun or pistol, or set off fireworks, within fifty feet of the centre of a carriage-way to the injury of the highway, *or* to the injury, interruption, or personal danger of a passenger; (h) for any hawker, gipsy, &c., to encamp on the highway; (i) to lay timber, stone, manure, lime, soil, rubbish, or other matter or thing whatsoever upon a highway, to its injury, *or* to the injury, interruption, or personal danger of any person travelling thereon; or (j) *in any way wilfully to obstruct the free passage of any highway* (5 & 6 Will. 4, c. 50, s. 72).

Various
nuisances.

Highway Act,
1835, s. 72.

Form of
Information,
post, p. 1224.

A defendant must not be convicted of offence (g) or (i) under this section, unless some injury is done to the highway, or unless annoyance or interruption is occasioned to the persons using it (cf. *Stimson v. Browning* (s); *Hill v. Somerset* (t)).

The statute creates *two* separate offences, *not four*, viz.—(i.) the doing of something to the injury of the highway, and (ii.) the doing of something to the injury, interruption or personal danger of a passenger. Accordingly, a conviction for laying rubble “to the interruption and personal danger” of persons travelling on the highway was held not to be bad for “duplicity” (*Smith v. Perry*) (u).

The removal of *nuisances* caused by laying timber, manure, &c., on a highway (cf. offence (i)) is provided for by s. 73, under which an ORDER of removal may be

(s) (1866) L. R. 1 C. P. 321; 35 L. J. M. C. 152; 30 J. P. 312

(t) (1887) 51 J. P. 742.

(u) *Ante*, p. 99.

made by a justice, who may direct the expenses (beyond any sum raised by the disposal of the timber, manure, &c.) to be recovered as a forfeiture. Notwithstanding the ill-drafting of the section, such an order may be made in respect of *timber* deposited so as to be a nuisance (*Dixon v. Chester*) (*x*).

Wilfully
obstructing
highway.

Where three or four persons have deliberately walked abreast on the footway, and so caused other passengers to walk in the roadway in order to pass by, convictions under the Town Police Clauses Act (*ante*, p. 423) for "obstruction" have been quashed (*R. v. Long* (*y*); *R. v. Williams* (*z*)). But s. 72 of the Highway Act (offence (*j*)) would seem clearly to cover such cases; and there can be no doubt that the public enjoy no right to hold meetings in highways, or to use them for any purpose except to pass and repass along them (see *R. v. Graham*) (*a*); so that a lecturer standing on a chair in a street and addressing a crowd attracted by him was held properly convicted of "obstruction" (*Homer v. Cadman*) (*b*). The Highway Act, 1835, applies to the metropolis (*Back v. Holmes*) (*c*). The obstruction to fall within s. 72 must be *wilful*, and its continuance after a notice to remove would, of course, be evidence of wilfulness (*Gully v. Smith*) (*d*). If the obstruction were otherwise than "wilful" the remedy would be by indictment for the common law misdemeanour (see, *e.g.*, *R. v. Lewis* (*e*), where crowds were attracted by an exhibition in the windows of a shop).

Apprehension
of offender.

The surveyor or any person acting under his authority, or any person witnessing the offence, may *apprehend* an offender against the Highway Act, 1835, *if his name be unknown*, and take him before a justice (s. 79).

Appeal.

Penalties.

APPEAL against a conviction lies to quarter sessions (s. 105). Forfeitures and penalties are payable, half to the informer, and half to the surveyor towards repairs of

- (*x*) (1906) 70 J. P. 380; 4 L. G. R. 1127; 22 T. L. R. 501.
- (*y*) (1888) 52 J. P. 630.
- (*z*) (1891) 55 J. P. 406.
- (*a*) (1888) 16 Cox, 310.
- (*b*) (1886) 55 L. J. M. C. 110; 50 J. P. 454.
- (*c*) (1887) 57 L. J. M. C. 37; 16 Cox, 263; 56 L. T. 713; 51 J. P. 693.
- (*d*) *Ante*, p. 347. And see *ante*, p. 372 (*tt*).
- (*e*) (1881) 72 L. T. News. 117.

the highway (s. 103). Special fees are fixed by s. 110. Fees.
See also CATTLE STRAYING (*ante*, p. 359), and DRIVING
AND RIDING (*ante*, p. 419).

As to fencing "quarries," see 50 & 51 Vict. c. 19, UNFENCED
QUARRIES.
which enables unfenced quarries in open or uninclosed
land (within FIFTY yards of a highway or place of public
resort dedicated to the public) to be dealt with as nuisances
under the Public Health Act, 1875 (*post*, p. 831), if they
are in a dangerous condition.

HEAVY LOCOMOTIVES ON HIGHWAYS.

As to LIGHT LOCOMOTIVES, *i.e.*, MOTOR CARS, see *post*,
p. 727. A "heavy motor car" (ART. II., *post*, p. 1191)
is within the Motor Car Acts, and, therefore, exempt
from the requirements hereinafter set forth, restricting
the use of "heavy locomotives" on highways (*Evans v.*
Nicholl) (*ee*).

Any person commits an offence who uses on a highway
a locomotive not constructed on the principle of consum-
ing its own smoke, *or* not consuming its own smoke
so far as practicable (41 & 42 Vict. c. 77, s. 30). If the
locomotive is proved to have smoked, the burden is upon
the defendant (*Pitt Rivers v. Glassey*) (*f*).

Locomotive to
consume its
OWN SMOKE.

Where quantities of blue-coloured smoke were emitted,
owing to the negligence of an omnibus driver in supply-
ing too much lubricating oil to the working parts of the
machinery, but the engine of the omnibus was a properly
constructed "smokeless" engine driven by petrol, it was
held that no offence was committed under this section
(*Star Omnibus Co. v. Tagg*) (*g*); see also *R. v. Wilbraham*;
Ex parte Rowcliffe (*h*), and *Hindle v. Noblett* (*hh*).

PENALTY.—FINE, not exceeding 5*l.* per day, and, in
default of distress, imprisonment, *without* hard labour,
according to scale (p. 111).

There are, too, elaborate statutory provisions as to the
weight, construction and mode of user of locomotives

Provisions as
to WEIGHT
and CON-
STRUCTION of
locomotives.

(*ee*) [1909] 1 K. B. 778; 78 L. J. K. B. 428; 100 L. T. 496; 7
L. G. R. 386; 25 T. L. R. 239; 73 J. P. 154.

(*f*) (1891) 55 J. P. 663.

(*g*) (1907) 97 L. T. 481; 23 T. L. R. 438; 71 J. P. 352; 5
L. G. R. 808.

(*h*) *Post*, p. 728.

(*hh*) (1908) 99 L. T. 26; 72 J. P. 373; 6 L. G. R. 825.

Weight and construction of locomotive.	(i.e., all locomotives propelled by steam or other than animal power) used on highways. Thus:— The locomotive must not exceed nine feet in width or fourteen tons in weight, unless by the express authorization of (and subject to any conditions imposed by) the local authority within whose limits it is being used (41 & 42 Vict. c. 77, s. 28). The same section prescribes the size of the tires and the construction of the driving wheels, though the requirements as to the driving wheels may be varied by order of the Local Government Board (<i>ib.</i> ; 59 & 60 Vict. c. 36, s. 9). Under an order of November 21st, 1903, the driving wheels may (subject to certain conditions) be shod with wooden blocks instead of being smooth soled, or shod with cross-bars; and as to the use of "pedrails," see order of August 7th, 1905. Moreover, the <i>weight</i> of the locomotive, and the <i>name</i> of the owner or owners thereof, must be conspicuously and legibly affixed thereon (24 & 25 Vict. c. 70, s. 12).
Name of owner to be affixed.	The PENALTY on the owner for any breach of these requirements is 5 <i>l.</i> , recoverable as above.
Residence of owner to be affixed.	The <i>residence</i> of the owner of the locomotive must also be affixed in a conspicuous manner under a penalty of 2 <i>l.</i> (28 & 29 Vict. c. 83, s. 7); and if the owner should fraudulently affix any <i>incorrect weight</i> , he would be liable to a penalty of 10 <i>l.</i> (24 & 25 Vict. c. 70, s. 12).
Provisions as to weights to be carried by and number of waggons.	There are, too, provisions as to the <i>weights to be carried</i> by the <i>waggons</i> or other vehicles drawn or propelled by the locomotive (24 & 25 Vict. c. 70, s. 4; 61 & 62 Vict. c. 29, s. 1); and it is enacted that the locomotive shall not be used to draw more than <i>three loaded waggons</i> exclusive of any waggon solely used for carrying water for the locomotive (61 & 62 Vict. c. 29, s. 3).
Weight of waggon to be affixed.	If <i>any person uses</i> a locomotive (or waggon) in contravention of the sections last cited, or being an <i>owner</i> of the locomotive (or waggon) <i>permits</i> it to be so used, he is liable to a penalty of 10 <i>l.</i> for each offence. The council of a county or of a municipal borough may, however, allow relaxation of these provisions within the limits of their own jurisdiction. The <i>weight</i> , unloaded, of every <i>waggon</i> or other vehicle must, moreover, be conspicuously and legibly affixed thereon under a penalty of 5 <i>l.</i> on the <i>owner</i> , who would, indeed, be liable to a penalty of 10 <i>l.</i> if he should

fraudulently affix on the waggon any *incorrect* weight (*ib.* s. 2).

The following rules and regulations as to the *working* of a *locomotive* on the highway are in force (28 & 29 Vict. c. 83, s. 3; 61 & 62 Vict. c. 29, s. 5).

REGULA-
TIONS FOR
LOCOMOTIVE
PASSING
ALONG A
HIGHWAY.

Persons in
attendance :
lights, &c.

(a) Two persons must be employed in driving or attending to it, and (except in the case of a steam-roller) an additional person to give assistance to passengers with horses. When more than three waggons are being drawn, another person must be employed to attend to them. There is special provision for *two* plough engines if closely following one another.

(b) The driver must give as much space as possible for the passing of other traffic.

(c) The whistle may not be sounded; nor the steam allowed to blow off; nor may the cylinder taps be opened within sight of any passenger with a horse.

(d) The locomotive must be instantly stopped on the person preceding the same, or any passenger with a horse, putting up his hand as a signal.

(e) Two conspicuous lights must be affixed in the front, one on each side, between one hour after sunset and one hour before sunrise during the six months beginning April 1st, and between sunset and sunrise during the six months beginning October 1st. There must also be a conspicuous red light on the rear of the locomotive during those hours, or, if it is drawing waggons, on the rear of the last waggon. Each light must be fitted with efficient shutters or similar contrivances.

(f) So long as the fires are alight, or the locomotive contains in itself sufficient motive power to move it, one person must remain in attendance whilst it is on any highway although it may be stationary.

In cases of non-compliance with any of these *rules or regulations* the *owner* of the locomotive is liable to a PENALTY of 10*l.* recoverable by *distress*, and, in default, imprisonment *without* hard labour according to scale (p. 111).

PENALTY.

Speaking generally, no locomotive may travel at a greater *speed* than *four miles* an hour; or through any

Travelling
speed.

city, town, or village at a greater speed than *two miles* an hour. This is, however, subject to bye-laws by local authorities as to the use of locomotives within their respective jurisdictions. The PENALTY for contravention is 10*l.*, recoverable similarly (28 & 29 Vict. c. 83, s. 4). It seems that this prohibition does not extend to a locomotive belonging to the Crown, which is being used by a servant of the Crown, acting in obedience to his instructions, for Crown purposes (*Cooper v. Hawkins*) (i).

Erection and
use of weigh-
ing machines.

Power is given to *road authorities* to erect in their districts *machines for weighing locomotives* and loaded waggons drawn by them, and to compel the persons in charge to proceed to such machines for the purpose of having the locomotive and waggons weighed. If the "person in charge" refuse or neglect to comply with such requirement he becomes subject to a PENALTY of 10*l.*, recoverable similarly (61 & 62 Vict. c. 29, s. 4). The authority must give a certificate of weight, which will exempt the locomotive and waggons from being weighed during the continuance of that journey. If the weight prove to be within the authorized limits, the authority will be liable to make good any loss occasioned by the delay.

Locomotives
not to meet
on a bridge.

A locomotive must not be taken across any bridge so as to meet or pass any other locomotive upon such bridge. The PENALTY for breach of this provision is 5*l.* (*ib.* s. 8).

As to restricting the user by locomotives of bridges other than county bridges, see 24 & 25 Vict. c. 70, s. 6, and bye-laws, *post*, p. 542.

LICENCES for
locomotives.

Every locomotive (with certain exceptions specified below) must be *licensed* by the council of the county or county borough in which it is at the time ordinarily used or to be used. An additional licence may be taken out in any other county, and the locomotive must not be used on any highway in a county or county borough in which it is not licensed except on payment of a fee to the council not exceeding 2*s.* 6*d.* per day. A licence plate (provided by the council) must be fixed to the locomotive in a conspicuous position, and not removed whilst

(2) [1904] 2 K. B. 164; 73 L. J. K. B. 113; 89 L. T. 476; 68 J. P. 25.

the licence (which must be renewed annually) is in force, without the consent of the council (61 & 62 Vict. c. 29, s. 9).

The *exceptions* above referred to are as follows :—

- (a) Agricultural locomotives, which include those used solely for threshing, ploughing, or any other agricultural purpose, and those which are the property of one or more owners or occupiers of agricultural land employed solely for the purposes of their farms, and not let out on hire ;
- (β) Locomotives not used for haulage purposes ;
- (γ) Steam rollers ; and
- (δ) Locomotives belonging to a road authority when used by them within their district.

Except *agricultural locomotives, &c.*, which must be REGISTERED.

Every locomotive falling within these exceptions, although not required to be licensed, must (unless it be a steam roller of a road authority, used by them within their district) be *registered* in the county or county borough in which it is ordinarily used or to be used. A registration plate (provided by the council) must be fixed to the locomotive (61 & 62 Vict. c. 29, ss. 9, 10, 17).

An OFFENCE is committed by any person who—

- (a) uses on any highway a locomotive which is required to be, but is not, LICENSED ; or
- (b) fails to affix the LICENCE PLATE, or removes it in contravention of the Act (*ib.* s. 9 (x)).

OFFENCES as to LICENCES and REGISTRATION.

PENALTY not exceeding 10*l.* recoverable by *distress*, and, in default, imprisonment *without* hard labour, according to scale (p. 111).

In cases of similar offences where the locomotive is not required to be licensed, but is required to be REGISTERED, the maximum penalty is 5*l.* (*ib.* s. 10 (iv)).

A PENALTY of 10*l.* is incurred by any person who uses a locomotive on any highway in a county *in which it is not licensed*, without payment of the required fee (*ib.* s. 9 (x)). Merely passing, with the locomotive, along a highway for the purpose of using it outside the district is a user within the district (*London C.C. v. Wood*) (*k*).

Anyone who *forges*, counterfeits, or tampers with, or who causes or procures to be forged, counterfeited, or

(*k*) [1897] 2 Q. B. 482 ; 66 L. J. Q. B. 712 ; 77 L. T. 312 ; 46 W. R. 143 ; 61 J. P. 567.

tampered with, a *licence plate* or *registration plate*, or who knowingly uses a locomotive having thereon a plate which has been forged, &c., is liable to a PENALTY of 20*l.*, recoverable similarly (*ib.* s. 11).

Power to
make BYE-
LAWS.

The council of a county, or of a borough with at least 10,000 inhabitants (according to the 1881 census), may make *bye-laws* prohibiting or restricting the use of locomotives on a *specified highway*, or of a locomotive on a *specified bridge*. The council may, however, grant a special authority for the use of a locomotive on the specified highway, or (with the consent of the persons liable to repair it) on the specified bridge. They may, too, make bye-laws regulating the use of locomotives, and of waggons drawn by locomotives, on any highway (*ib.* s. 6).

PENALTY for
breach of
BYE-LAW.

Any "person in charge" of a locomotive who acts in contravention of a bye-law, and without such special authority, is liable to a PENALTY of 5*l.*, recoverable similarly (*ib.* s. 6 (ii.)).

The provisions as to *confirmation* by the Local Government Board, and as to the *printing and evidence* of bye-laws contained in ss. 184—186 of the Public Health Act, 1875, are (with an additional provision) applicable to these bye-laws (*ib.* s. 6 (iii.)). Cf. *post*, p. 804.

Existing bye-
laws.

Local Acts.

The last-cited Act, *i.e.*, the Locomotive Act, 1898, came into operation on January 1st, 1899; but it does not affect local Acts, nor bye-laws under repealed Acts so far as they relate to user on bridges (*ib.* s. 18).

Power of
OWNER of
locomotive to
*exempt him-
self* from fine
on conviction
of ACTUAL
OFFENDER.

Where the *owner* of a locomotive or waggon is charged with an offence under any Act or bye-law relating to locomotives on highways, he may (upon information laid by him) have his servant, or any other person whom he charges as the *actual offender*, brought before the court at the time appointed for the hearing; and if, after proof of the commission of the offence, the owner satisfies the court that he has used due diligence to enforce the execution of the Act, and that the other person has committed the offence without his knowledge or connivance, such other person is liable to be convicted, and the owner is to be exempt from any fine (*ib.* s. 13).

APPEAL.

APPEAL lies to quarter sessions in case of offences against the Act of 1878, *i.e.*, breach of provisions as to a locomotive not consuming its own smoke, and as to

the weight and construction of locomotive (*ante*, p. 537; 41 & 42 Vict. c. 77, s. 37).

HOUSEBREAKING.

Housebreaking is the offence of BREAKING AND ENTERING a dwelling-house with intent to commit a felony therein. A *breaking* may be constituted either by an actual breaking Breaking. of any part, internal or external, of the building, by picking the lock of a door or opening it with a key, or by the mere lifting of a latch, or opening of a closed window, door, shutter, grating, or the like; but it is no breaking to enter through an *open* window or door. Obtaining an entrance by a threat or artifice, or by collusion with any person in the house, will also amount to a breaking; as, too, will an entrance by means of the chimney.

An *entering* is constituted by the insertion into the Entering. house of *any part* of the offender's body, or of any instrument held in the hand for the purpose of intimidating any person in, or of removing any goods from, the house (Stephen's "Digest of Criminal Law," 6th edit. p. 283). "The word *enter* does not include the entrance of *part* of an instrument used to break the house open" (*ib.*).

A *dwelling-house* is a building in which the occupier or his family habitually reside and sleep, but it is not necessary that any person should be therein on the occasion of an alleged offence. The offence may be committed in the temporary absence of the occupants of the Dwelling-house. house.

A building occupied with and within the curtilage of any dwelling-house, and between which and the dwelling-house there is communication, either immediate or by means of a covered and inclosed passage, is deemed *part* of the dwelling-house (24 & 25 Vict. c. 96, s. 53). "Part" of dwelling-house.

The entering must be with a *felonious intent*, as evidenced by the general circumstances of the case, otherwise the act would amount merely to a trespass. Felonious intent.

For the purposes of the Larceny Act, 1861, "night" is deemed to include the period between 9 P.M. and 6 A.M. Greenwich time (*ib.* s. 1; 43 & 44 Vict. c. 9). "Night."

The following offences are defined by the Larceny Act,

Housebreak-
ing and
burglary.

1861 (24 & 25 Vict. c. 96), and none of them in case of an adult, is triable summarily:—

- (a) Breaking and entering any *dwelling-house, school-house, shop, warehouse or counting-house*, and committing *any felony* therein; or breaking out after committing felony. [Felony; penal servitude, fourteen years.] (s. 56.)
- (b) Breaking and entering any building *within the curtilage of a dwelling-house*, and occupied therewith, but *not forming part thereof* (*supra*), and committing *any felony* therein; or, breaking out after committing felony. [Felony; penal servitude, fourteen years.] (s. 55.)
- (c) Breaking and entering any dwelling-house, church, chapel, or other religious meeting-house, building within the curtilage of any dwelling-house and occupied therewith, school-house, shop, warehouse, or counting-house, *with intent to commit felony*. [Felony; penal servitude, seven years.] (s. 57; and see SACRILEGE, *ante*, p. 388.)
- (d) Being found *by night* armed with any *dangerous or offensive weapon* or instrument, *with intent to break or enter* any dwelling-house or other building, and commit felony therein; or, being found *by night*, having in possession, without lawful excuse, any picklock, key, crow, jack, bit, or other *implement of house-breaking*; or, being found *by night* having the *face blackened* or disguised, with intent to commit *any felony*; or, being found *by night* in any *dwelling-house or other building* whatsoever, with intent to commit any felony therein. [Misdemeanour; penal servitude, five years. After previous conviction for any felony or under this section, penal servitude for ten years.] (ss. 58, 59.)

Offences at
night.

As to these or similar offences committed in the *day-time*, see VAGRANTS, *post*, p. 930. If two persons act in concert, the possession of an instrument of house-breaking by one may be sufficient to support the conviction of both (*R. v. Thompson*) (*kk*). As to what constitutes an “implement” of housebreaking, see *R. v. Percival*, cited *post*, p. 930.

- (e) *Breaking and entering the dwelling-house of another in the night-time, with intent to commit felony.* [Felony; penal servitude for life; triable at assizes unless, owing to the absence of any circumstances which make the case a grave or difficult one, the magistrate thinks it expedient, in the interests of justice, to commit to quarter sessions: 59 & 60 Vict. c. 57.] (24 & 25 Vict. c. 96, s. 52.)

This constitutes the offence of burglary.

- (f) *Entering the dwelling-house of another with intent to commit felony, or being therein committing felony, and, in either case, breaking out of the dwelling-house in the night-time.* [Offender to be deemed guilty of burglary, and to be punishable and triable as above (e).] (s. 51.)
- (g) *Entering any dwelling-house in the night-time, with intent to commit felony.* [Felony; penal servitude, seven years.] (s. 54.)

HUSBAND AND WIFE.

SUMMARY JURISDICTION (MARRIED WOMEN) ACT, 1895

(58 & 59 Vict. c. 39).

LICENSING ACT, 1902 (2 Edw. 7, c. 28).

The Act of 1895 (as extended by the Licensing Act, 1902) enables a married woman to apply to a court of summary jurisdiction for relief in any one of the following cases:—

Applications
by married
woman for
relief.

- (a) Where the husband has been (i.) summarily convicted of an *aggravated assault* upon her (cf. *ante*, p. 282); or (ii.) convicted upon indictment of an *assault* upon her and sentenced to pay a fine of more than 5*l.* or to be imprisoned for more than two months: Assault.
- (β) Where the husband has *deserted* her: Desertion.
- (γ) Where the husband has been guilty of *persistent cruelty* to her and has by such cruelty caused her to leave and live separately and apart from him: Cruelty.
- (δ) Where the husband has been guilty of *wilful neglect* to provide reasonable maintenance for her or her infant children whom he is legally liable to maintain: Neglect.

(cf. *post*, p. 785), and has by such neglect caused her to leave and live separately and apart from him—(58 & 59 Vict. c. 39, s. 4).

Habitual
drunkenness.

(e) Where the husband is a *habitual drunkard* as defined by s. 3 of the Habitual Drunkards Act, 1879. "Habitual drunkard" means a person, who not being amenable to any jurisdiction in lunacy, is notwithstanding, by reason of *HABITUAL intemperate drinking* of intoxicating liquor, at times dangerous to himself or to others, or incapable of managing himself AND his affairs (2 Edw. 7, c. 28, s. 5; 42 & 43 Vict. c. 19, s. 3).

Who is a
"habitual
drunkard."

The phrases here used are not mere random phrases, but are well established in the practice regulating lunacy inquisitions; it seems, however, that a finding of justices that a man is a "habitual drunkard" will not be interfered with although based on the vaguest evidence, as that he was "constantly drinking," "very rarely sober," assaulted his wife and threatened others (cf. *Robson v. Robson*) (l). See, too, *Eaton v. Best* (ll), where it was proved that the respondent "would sometimes be drunk three or four times in one week; and at other times *he would keep sober for four or five weeks*. When drunk he did not appear to know what he was doing; *when sober he was 'as right as anyone.'* He had been seen apparently dazed the day after drinking heavily, but not more dazed than any other person would be who had consumed as much alcohol."

"We ought not," said *Alverstone, C.J.*, "to cut down the definition in the way contended for on his (the respondent's) behalf and say that it does not apply to a man who between the bouts of drinking is a sober man." "I think," said he, "the definition means a man who by habitual drinking is habitually in the condition of not being capable of managing his own affairs. In my judgment the court ought not to say that he is not a habitual drunkard because when sober he is capable of managing his own affairs."

Such being the interpretation, the definition itself seems singularly inept.

(l) (1904) 68 J. P. 416.

(ll) [1909] 1 K. B. 632; 78 L. J. K. B. 425; 100 L. T. 494; 25 T. L. R. 244; 73 J. P. 113.

It will be noticed that in cases of "persistent cruelty" and "wilful neglect," the application cannot be made unless and until the wife has been driven to *leave and live apart from* her husband. Where, however, the wife is the tenant of the house (as not infrequently happens, especially when she is carrying on a separate business), it would seem to be sufficient if she has called upon her husband to quit the house and he has refused or neglected so to do, provided, of course, that the wife has ceased to cohabit with her husband.

Conditions precedent to relief.

When the husband is charged simply with "*wilful neglect* to provide reasonable maintenance," the court, before making an order, must be satisfied that the husband either is in receipt of actual earnings or has the capability of earning a livelihood (*Earnshaw v. Earnshaw*) (*m*).

All applications under the Act of 1895 are to be made in accordance with the Summary Jurisdiction Acts, though, in the case of a (ii.), the woman may also apply to the court before whom her husband has been convicted on indictment. In the case of a conviction of the husband for "aggravated assault," the application may, by leave of the court, be made by summons to be issued and made returnable immediately upon such conviction (ss. 4, 8). Of course, if the defendant on reasonable grounds makes application for an adjournment, the hearing will be postponed.

Applications to be made in accordance with Summary Jurisdiction Acts.

Where the wife of a married man is a *habitual drunkard* as defined above, the *man* may apply to the court for an order; and there is a provision enabling the court, on such an application, to commit the wife to a licensed retreat in lieu of making an order of separation. The committal would have effect as though the woman had been admitted to the retreat under 42 & 43 Vict. c. 19, s. 10, but such committal can only take place *if the wife consents* to this course being adopted (2 Edw. 7, c. 28, s. 5 (ii.)).

Application by married man.

The application for an order or orders under the Act of 1895 may be made to any court of summary jurisdiction acting within the city, borough, petty sessional or other division or district, *in which the conviction for assault has taken place, or in which the cause of complaint*

Where the application may be made.

58 & 59 Vict. c. 39. *has wholly or partially arisen* (s. 4); so that, in the case of "desertion," it may be made within the jurisdiction where the wife is living at the time of the application for the summons (cf. *Chudley v. Chudley* (n); *Brown v. Brown* (o)).

When the application must be made.

As the application is made under the Summary Jurisdiction Acts, the summons must be applied for *within six months* of the date of the conviction for aggravated or other "assault," or of the date when the wife was, by cruelty or neglect, caused to leave and live apart from her husband (*Ellis v. Ellis* (p); *Medway v. Medway* (q); and see *ante*, pp. 34, 35). But in the case of "desertion," which is, in its nature, of a *continuing* character so long as the separation lasts (except, in certain circumstances, when it may be determined by an express agreement to continue to live apart or by a *bonâ fide* offer to resume cohabitation), the application may be made irrespective of the six months' limitation (*Heard v. Heard* (r)). So, too, in the case of "habitual drunkenness."

Meaning of DESERTION.

Whether or not there has been "desertion" is a question of fact for the court; but, in order to constitute desertion, it must be shown that there was a deliberate purpose of abandoning the conjugal society—*desertion* implies an *active withdrawal from an existing state of cohabitation*, though the withdrawal need not be for any specified period, nor need there be neglect to afford support, nor is it necessary to fix on any particular day as the date when the desertion began (*Wilkinson v. Wilkinson*) (s). "Desertion does not necessarily involve that the wife *desires* her husband to remain with her. She may be thankful that he has gone, but he may nevertheless have deserted her" (per *Buckley, L.J.*, in *Harriman v. Harriman*, cited *post*, p. 555). But, although it is not necessary that the husband should actually drive his wife away from him, there must be *an intention on his part to break off matrimonial relations*. If the wife leaves her home in consequence of a mere

(n) *Infra*, p. 550.

(o) (1898) 79 L. T. 102.

(p) [1896] P. 251; 65 L. J. P. 124; 75 L. T. 390; 45 W. R. 144; 60 J. P. 823.

(q) [1900] P. 141; 69 L. J. P. 56; 64 J. P. 120; 82 L. T. 627.

(r) [1896] P. 188; 60 J. P. 426; 65 L. J. P. 111.

(s) (1894) 58 J. P. 415.

expression that she "can go where she likes and do what she likes," and then refuses to return, that is not desertion on the part of the husband (*Charter v. Charter*) (t). Moreover, the husband may show that, short of a matrimonial offence, his wife's conduct was such as to justify him in refusing to live with her. "Desertion," said *Sir F. Jeune*, "means the cessation of cohabitation brought about by the fault or act of one of the parties. Therefore, the *conduct of the parties must be considered*. If there is good cause or reasonable excuse, it seems to me there is no desertion at all in law" (*Frowd v. Frowd*) (u): as, e.g., when the wife is guilty of great violence to her husband; or refuses to allow him to exercise his full marital rights, even though he may have committed adultery when separated from her by mutual consent (*Synge v. Synge*) (x). A mere refusal to resume cohabitation is not desertion. "If the state of cohabitation has already ceased to exist, whether by the adverse act of husband or wife, or even by the mutual consent of both, '*desertion*' becomes from that moment impossible to either, at least until their common life and home have been resumed" (*Fitzgerald v. Fitzgerald*) (y). It follows, therefore, that, after a mutual separation upon terms, a refusal to comply with such terms, or to support the wife, does not amount to desertion (*Pape v. Pape*) (z). Nor, where husband and wife are living apart under a separation deed, does a refusal by the husband of the wife's offer to resume cohabitation constitute a "desertion" (*R. v. Leresche*) (a). And this is so, even although there may have been "desertion" prior to, and at the time of, the execution of the deed; in fact, the deed usually contains a clause providing for the condonation of past offences. By executing the document the wife bargains away whatever rights she had; though, if the man, intending to abandon his

Meaning of
DESERTION
—*contd.*

(t) (1901) 84 L. T. 272; 65 J. P. 246; 17 T. L. R. 328.

(u) [1904] P. 177; 73 L. J. P. 60; 90 L. T. 175; 68 J. P. 436.

(x) [1901] P. 317; 70 L. J. P. 97; 85 L. T. 83.

(y) (1869) L. R. 1 P. & M. 694; 38 L. J. Mat. 14; 19 L. T. 575; 17 W. R. 264.

(z) (1887) 20 Q. B. D. 76; 57 L. J. M. C. 3; 58 L. T. 399; 52 J. P. 181.

(a) [1891] 2 Q. B. 418; 60 L. J. M. C. 153; 65 L. T. 602; 56 J. P. 37; 40 W. R. 7; 17 Cox, 384.

58 & 59 Vict.
c. 39.

Meaning of
DESERTION
—*contd.*

Withdrawal
from cohabi-
tation.

wife, were to set about *fraudulently*, by a mere show of an agreement, to induce or extort her consent to their mutual separation, the validity of the agreement might be impugned and the wife remitted to her original rights (*Piper v. Piper*) (b). Moreover, the mere fact that marital intercourse had occasionally taken place between the parties is not *conclusive* evidence that they had ceased to live separate under the deed and that the deed was no longer effective (*Rowell v. Rowell*) (c); but the resumption and continuance of conjugal relations, after separation under a deed, may be such as to render a subsequent refusal to continue an allowance under the existing agreement evidence of a desertion by the husband (*Edwards v. Edwards*) (d). And a refusal by the husband to cohabit may constitute desertion, even *where the parties separate at the church door* owing to the husband's inability to support a wife, provided that the wife has never refused to cohabit nor bargained not to live with her husband (*De Laubenque v. De Laubenque*) (e). Again, during a *temporary separation* between a husband and his wife for *mutual convenience*, cohabitation does not cease, and the marital relations are not altered; and, consequently, a husband who, under such circumstances, refuses to take his wife back again, or to maintain her, may be guilty of "desertion" (*Chudley v. Chudley*) (f). It is, moreover, to be observed that persons may be said to "cohabit" in the wider sense of the term although not living together physically under the same roof, as where a man married a domestic servant and visited her when so disposed and had children by her (*Bradshaw v. Bradshaw*) (g). Business duties, domestic service, and other circumstances of life may separate the parties, and yet there may be an existing state of cohabitation (see, e.g., *Hurttable v. Hurttable*) (h), where the parties, having been employed as man and wife in the same domestic

(b) [1902] P. 198 ; 71 L. J. P. 100 ; 87 L. T. 150.

(c) [1900] 1 Q. B. 9 ; 69 L. J. Q. B. 55 ; 81 L. T. 429.

(d) (1905) 69 J. P. 344.

(e) [1899] P. 42 ; 68 L. J. P. 20 ; 79 L. T. 708.

(f) (1893) 69 L. T. 348, 617 ; 62 L. J. M. C. 97 ; 17 Cox, 697.

(g) [1897] P. 24 ; 66 L. J. P. 31 ; 75 L. T. 391 ; 45 W. R. 142 ; 61 J. P. 8.

(h) (1899) 68 L. J. P. 83.

service, left that service and separated by mutual consent to find work, under an arrangement, that when they had saved sufficient money, they should make a "home" and live together again).

The mere fact that a man is living in adultery with another woman does not *in itself* necessarily amount to desertion. Yet, where an adulterous husband, having the intention to desert his wife, fled to Australia to avoid a charge of felony, and was arrested whilst carrying on an adulterous intrigue there, it was held that this was a *continuing* desertion, although the man was *prevented* by the arrest from returning to his wife; such desertion *commencing* when he prepared for flight (*Drew v. Drew* (i); and see *Wynne v. Wynne* (k), where an adulterous husband absconded to escape prosecution, inducing his wife to believe that he was going abroad for a short time only). It must, too, be remembered that, if a husband is living in adultery with another woman, the wife is justified in saying: "I will not return to you, nor shall I allow you to have access to me whilst you are living in open adultery with another woman"; so that, where a husband for several years contributed an allowance towards the support of his wife and occasionally passed a night at her house, but the wife refused to continue the occasional cohabitation in consequence of a discovery that her husband had been for some time living in adultery, and thenceforth no marital intercourse took place, it was held that there was "desertion" from the date when the occasional cohabitation ceased (*Garcia v. Garcia* (l); and see *Edwards v. Edwards* (m)). So, too, where the wife left her husband's roof because of his misconduct in bringing into the house a woman with whom he had immoral relations and insisting upon her being allowed to remain there (*Dickenson v. Dickenson* (n); and see *Koch v. Koch* (o), where the husband refused to discharge a servant with whom he maintained an adulterous intercourse). If the situation brought about

Adultery on part of husband.

(i) (1888) 13 P. D. 97; 57 L. J. P. D. 64; 58 L. T. 923; 36 W. R. 927.

(k) [1898] P. 18; 67 L. J. P. 5; 46 W. R. 560.

(l) (1888) 13 P. D. 216; 57 L. J. P. 101; 52 J. P. 584.

(m) (1893) 62 L. J. P. 33.

(n) (1890) 62 L. T. 330.

(o) [1899] P. 221; 68 L. J. P. 90; 81 L. T. 61.

53 & 59 Vict. c. 39. by the conduct of the husband forces the wife to leave the house, this may constitute desertion by the husband. Indeed, where the wife withdrew from cohabitation by reason of her husband's refusal to discontinue an adulterous intercourse *carried on away from the matrimonial home*, even this was held to amount to desertion (*Sickert v. Sickert*) (p).

Persistent
cruelty.

The Act contains no definition of "persistent cruelty"; but there is reported an *obiter dictum* of Lord St. Helier's to the effect that a number of acts of cruelty committed on one day might amount to persistent cruelty (*Broad v. Broad*) (q). There are many reported decisions as to the meaning of "cruelty" under the Matrimonial Causes Act, 1857; and it may be observed that it is necessary to prove acts of violence (or the reasonable apprehension of such acts) of a nature calculated to imperil the health or safety of the wife (*Milford v. Milford*) (r). But violence and ill-usage exhibited towards a child in the presence of the mother, with the express purpose of causing the latter to suffer pain, might amount to cruelty, at any rate if the mother's health were thereby affected (cf. *Birch v. Birch*) (s). So, too, the wilful communication of venereal disease; but neglect and insult, or the annoyance and discomfort occasioned by habits of intemperance, would not constitute cruelty unless, indeed, the consequence was that the physical or mental condition of the wife was seriously impaired (*Walmesley v. Walmesley*) (t); and, in fact, the House of Lords have held that persistence in the publication of a foul libel imputing to the husband an infamous crime, without any belief in the truth of the imputation, is not legal cruelty entitling the husband to a judicial separation (*Russell v. Russell*) (u).

It must, too, be remembered that, although cruelty may have been *condoned*, it is nevertheless liable to be *revived* by subsequent similar misconduct on the part of the husband. The court, moreover, may take into consideration acts of cruelty committed prior to January 1st,

(p) [1899] P. 278; 68 L. J. P. 114; 81 L. T. 495.

(q) (1898) 78 L. T. 687.

(r) (1866) L. R. 1 P. & D. 295; 37 L. J. P. & M. 77; 15 L. T. 392.

(s) (1873) 42 L. J. P. & M. 23; 28 L. T. 40; 21 W. R. 463.

(t) (1893) 69 L. T. 152.

(u) [1897] A. C. 395; 66 L. J. P. 122; 61 J. P. 756.

1896, the date when the Act came into operation (*Lane v. Lane*) (x).

The defendant cannot be compelled to attend the hearing by warrant *in the first instance* (*ante*, p. 42); but the parties are, of course, competent and compellable to give evidence. In accordance with the practice which obtains in the Divorce Court, the justices should require *corroboration* of the wife's story before making an order *on the ground of persistent cruelty*. The amount and nature of the independent evidence necessary depends on the circumstances of each particular case; and, in proceedings before the High Court, when the absence of other evidence was accounted for, *Deane, J.*, accepted, as sufficient corroboration, proof of an order made by justices on the same charge of cruelty, being satisfied that such order had been obtained on proper materials (*Judd v. Judd*) (y). It has been held that justices should, as a rule, follow the practice in the High Court, and (where there are no children) make such an order as will put the wife in possession of *one-third* of the joint income (*Cobb v. Cobb* (No. 2) (z); *Wilcox v. Wilcox*) (a). In computing the amount of such joint income, the court may consider the *potential* as well as the actual earnings of the parties, and may take into account *voluntary* allowances made by third persons (*Nott v. Nott*) (b). It should also be observed that, in assessing the amount of maintenance, justices are entitled to take into consideration the existence of infant children of the wife by a former marriage, whom, by virtue of the poor law, the defendant is "legally liable to maintain" (*Hill v. Hill*) (c); (cf. *post*, p. 785). It is not necessary to give strict evidence of the marriage; the court may act on evidence of cohabitation, reputation, or admissions by the defendant, but, if the fact of marriage be denied, the testimony should be carefully sifted. Where a magistrate found that there had been a marriage

Procedure.

Alimony.

Proof of marriage.

(x) [1896] P. 133; 74 L. T. 557; 60 J. P. 345.

(y) [1907] P. 241; 76 L. J. P. 120; 98 L. T. 59; 23 T. L. R. 538.

(z) [1900] P. 294; 69 L. J. P. 125; 83 L. T. 716.

(a) [1902] 66 J. P. 166; 18 T. L. R. 237.

(b) [1901] P. 241; 70 L. J. P. 94; 84 L. T. 573; 65 J. P. 378.

(c) [1902] P. 140; 71 L. J. P. 81; 86 L. T. 597; 66 J. P. 344; 50 W. R. 400; 18 T. L. R. 393.

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ceremony between the parties in Russia, and that the absence of proof of its registration did not invalidate the marriage, the court refused to interfere, apparently treating the finding *as one of fact* (*Carlin v. Carlin*) (*d*). If the wife return to cohabitation pending an adjournment of the summons, of course, no order can be made (*Williams v. Williams*) (*e*). As to proof of *non-access* when the defendant pleads adultery and relies simply on the fact of the birth of a child, see *ante*, p. 296.

What the
order may
contain.

The ORDER must state the grounds on which it is based and may contain *all or any* of the following provisions, *i.e.*, a provision:—

- (i.) That the applicant be no longer bound to cohabit with her husband; and this provision whilst in force will have the effect of a decree of judicial separation on the ground of cruelty: [cf. *Harriman v. Harriman*, cited *post*, p. 555, in which the majority of the Court of Appeal held that this relief should not be given except on an application based upon a complaint of *cruelty* in some form, such as an allegation of assault, persistent cruelty, or wilful neglect accompanied by occasional acts of dangerous violence. The non-cohabitation clause is relief inconsistent with a complaint of *mere desertion*.]
- (ii.) That the custody of any children of the marriage whilst *under the age of sixteen years* be committed to the applicant;
- (iii.) That the husband shall pay to the applicant personally (or for her use to any officer of the court or third person on her behalf) such weekly sum not exceeding 2*l.* as the court considers reasonable, having regard to the means both of the husband and of the wife;
- (iv.) For payment, by the applicant or the husband or both of them, of the costs of the court and such reasonable costs of either of the parties as the court may think fit (s. 5). Where the *husband* of a *habitual drunkard* applies, any alimony will be payable by the applicant, and provision may be made

(*d*) (1906) 70 J. P. 143.

(*e*) [1904] P. 145; 73 L. J. P. 31; 68 J. P. 188; 90 L. T. 174; 20 T. L. R. 213.

for the legal custody of *any* children of the marriage (2 Edw. 7, c. 28, s. 5 (ii.)); and see *ante*, p. 546).

What the order may contain—*contd.*

Where the custody of the children is given to the mother, there is no power to provide as to “access” by the father; but it is common practice to require an undertaking from the mother to grant such access as a condition precedent to the making of a provision for custody.

If the application is dismissed and no order made as to costs, the wife’s solicitor cannot recover his costs by action against the husband (*Cale v. James* (f)); cf. *Barracough v. Brown* (g)). The justices may, it should be noted, refuse to make any order if they are of opinion that “the matters in question would be more conveniently dealt with by the High Court” (58 & 59 Vict. c. 39, s. 10). And, if proceedings are, in fact, pending in the Divorce Court, justices ought not to entertain any application; even though such proceedings may, at the moment, be stayed until the husband complies with an order made in the suit for costs and security (*Craxton v. Craxton*) (h).

It was the opinion of some writers that no provision as to the custody of the children, or as to maintenance, or as to costs could be inserted in an order not containing a provision for separation; the former provisions being merely subsidiary to the latter. But, as was pointed out in earlier editions of this work, the language of the section seems hardly capable of bearing so restricted a construction; and the courts have recently approved the view that an order for maintenance may and, in certain cases of desertion, ought to be made without any express provision for non-cohabitation (*Dodd v. Dodd*) (i). The *non-cohabitation* clause appears, indeed, to be appropriate only *where the wife’s safety is in jeopardy* (*Harriman v. Harriman*) (k); for its effect, if inserted, would, for the

(f) [1897] 1 Q. B. 418; 66 L. J. Q. B. 249; 76 L. T. 119; 45 W. R. 317; 61 J. P. 230.

(g) [1897] A. C. 615; 66 L. J. Q. B. 672; 62 J. P. 275.

(h) [1907] 71 J. P. 399; 23 T. L. R. 527.

(i) [1906] P. 189; 75 L. J. P. 49; 94 L. T. 709; 70 J. P. 163; 54 W. R. 541.

(k) [1909] P. 123; 78 L. J. P. 62; 100 L. T. 557; 53 S. J. 265; 25 T. L. R. 291; 73 J. P. 193.

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purposes of a suit in the High Court, prevent the continuance of *desertion* which had already commenced (*ib.*).

It has been held that, where a summons is, by consent of the court, withdrawn, the complaint on which it is founded comes to an end and a fresh summons cannot issue on the same matter of complaint (*Pickavance v. Pickavance*) (*m*).

Effect of
adultery by
wife prior to
application.

No order can be made if it is proved that the wife has committed an ACT OF ADULTERY, unless it appears that the husband has (*a*) condoned, or (*β*) connived at, or (*γ*) by his wilful neglect or misconduct conduced to, such act of adultery (s. 6).

Condonation.

CONDONATION, in so far as the principle is applied to matrimonial disputes, may be defined as the complete and voluntary forgiveness of a conjugal offence with full knowledge of all the circumstances, and it does not operate to protect the wife unless the forgiveness has been followed by conjugal cohabitation, or connubial intercourse, not necessarily renewed sexual intercourse (*Keats v. Keats*) (*n*). Thus a covenant in a separation deed not to institute proceedings does not in itself amount to condonation (*Gooch v. Gooch*) (*o*). The offender must be reinstated in the position which she occupied before the transgression. It is strong presumptive (but not conclusive) evidence of condonation that the parties continued to sleep in the same bed after the husband became aware of the adultery (*Hall v. Hall*) (*p*).

Connivance.

If a husband knows of and acquiesces in his wife's misconduct, he is guilty of CONNIVANCE although he may not have taken active steps to bring about the adultery (*Glennie v. Glennie*) (*q*). But mere neglect and indifference on his part will not constitute connivance, unless, indeed, knowing of the existence of a state of things reasonably calculated to result in adulterous intercourse, he wilfully abstains from taking any measures to prevent such intercourse from taking place; that is to say, he must *expect and intend* that his wife should commit adultery (*Allen v. Allen and another*) (*r*).

(*m*) Cf., *ante*, p. 95.

(*n*) (1858) 28 L. J. P. 57; 32 L. T. (O. S.) 321.

(*o*) [1893] P. 99; 68 L. T. 462; 62 L. J. P. 73; 11 W. R. 655.

(*p*) (1890) 60 L. J. P. 73.

(*q*) (1862) 32 L. J. P. 17; 11 W. R. 28.

(*r*) (1860) 30 L. J. P. & M. 2.

As to what amounts to WILFUL NEGLECT OR MISCONDUCT within the section, cf., the cases decided under the Matrimonial Causes Act, 1857; e.g., *Baylis v. Baylis and others* (s), in which case a man, having lived with a prostitute for nine months, married her and then compelled her to live apart from him in a place where he knew that she would be exposed to temptation and be likely to commit adultery. So, where the wife, driven by threats and cruelty to earn money by prostitution, left her husband and afterwards cohabited with another man, it was held by *Gorell Barnes, J.*, that her subsequent misconduct was a continuing result of the original misconduct of her husband, although she was not under her husband's control at the time (*Burdon v. Burdon*) (t). See further the numerous cases cited in Lushington's work on this Act, 2nd edit. pp. 85—92.

Wilful neglect or misconduct.

Any court of summary jurisdiction acting within the city, borough, petty sessional or other division or district in which an order has been made, may, at any time, on the application of either party, and upon cause being shown upon fresh evidence to the satisfaction of the court, alter, vary or discharge the order, and the court may upon any such application from time to time increase or diminish the amount of any weekly payment, subject to the 2*l.* limit (s. 7). This enactment as to variation and discharge is extended to existing orders made under the Matrimonial Causes Act, 1878, s. 4, or the Married Women (Maintenance in Case of Desertion) Act, 1886, although these Acts are now repealed. Evidence is not fresh if it were within the knowledge of, or could with reasonable diligence have been produced by, the party at the time of the trial (*Johnson v. Johnson*) (u). But, where more than six months after the making of the order, the husband discovered that his wife had committed adultery a few days before the order was made, it was held that an application to discharge stood on the same footing (as regards fresh evidence) as an application for a new trial, and ought to be entertained by the magistrate, and that such an application was not out of

Variation and discharge of the order.

Fresh evidence.

(s) (1876) L. R. 1 P. & D. 395; 16 L. T. 613.

(t) [1901] P. 52; 69 L. J. P. 118.

(u) [1900] P. 19; 69 L. J. P. 13; 81 L. T. 791; 64 J. P. 72.

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time (*Weightman v. Weightman*) (x). See also *Groves v. Groves* (y), where, after the making of the order, the defendant received from New Zealand a certificate of death of the applicant's first husband (for which he had written before the hearing) which showed that the first husband was alive when the defendant went through the form of marriage with the applicant.

In a very recent case, a *separation order* based on persistent cruelty gave the wife the *custody of the two children* of the marriage. The woman, finding the alimony insufficient, became a hospital nurse and left the children in the care of her mother who attended properly to their wants. The court held that, as the wife had not been guilty of misconduct, justices acted *without jurisdiction* in so *varying the order* as to give the husband the *custody of one of the children* (*Cobbe v. Cobbe*) (yy).

Resumption
of cohabita-
tion or
adultery.

If the wife voluntarily resumes cohabitation with her husband, or commits an act of adultery, the order "*shall, upon proof thereof, be discharged,*" and this provision also extends to existing orders made under the before-mentioned repealed enactments (s. 7). The husband is, therefore, entitled to have the order discharged on proof of subsequent adultery, although he may by his own misconduct have conduced to the adultery (*Ruther v. Ruther*) (z).

Where a separation order, made under s. 4 of the Act of 1878, contained *no provision* as to payment of maintenance to the wife, the court held that justices had no jurisdiction to vary the order by inserting such a provision; but intimated that it would be held otherwise were an application made to vary an order after the Act of 1895 came into operation (*Woodhead v. Woodhead*) (a).

Enforcement
of the order.

The payment of any sums due under the order may, after *one calendar month* from the making of such order, be enforced against the husband, in the district where the wife resides, in the same manner as the payment of

(x) (1906) 94 L. T. 620; 70 J. P. 120; 22 T. L. R. 362.

(y) (1907) 71 J. P. 167.

(yy) (1909) 25 T. L. R. 305; 73 J. P. 208.

(z) [1903] 2 K. B. 270; 72 L. J. K. B. 826; 52 W. R. 154; 67 J. P. 359.

(a) [1895] P. 343.

money is enforced under an order of affiliation (*ante*, p. 306; s. 9). This section does not refer to existing orders under the repealed statutes, but such orders will continue enforceable as though the statutes had not been repealed (*vide* 52 & 53 Vict. c. 63, s. 38, *post*, p. 1071). As to imprisonment for non-payment of arrears, see *R. v. Richardson*, cited *ante*, p. 307. If, although there has been a resumption of cohabitation, the order has continued undischarged, it would seem to be enforceable as to arrears accrued due prior to the date of such resumption but not as to arrears accrued after that date. Again, if the wife has committed an act of adultery, arrears due under the order will, it seems, be recoverable unless and until there is an *adjudication* of adultery (see the judgments in *Ruther v. Ruther*, *ante*, p. 558). Sums due under the order are not liable to equitable execution at the instance of a judgment creditor of the wife (*Paquine v. Snary*) (*aa*). It will be observed that a court to whom application is made for the enforcement of payment of arrears is not, unless it happens to be within the district in which the order was made, of competent jurisdiction to discharge the order under s. 7. As to the enforcement of an order against a *soldier*, see *ante*, p. 305, and *post*, p. 885.

A provision as to the custody of a child could hardly be enforced under the S. J. Act, 1879 (*ante*, p. 120); see 65 J. P. 127, and cf. *Brown v. Brown* (*b*).

Appeal lies from any order or the refusal of any order by a court of summary jurisdiction under this Act to the Probate, Divorce and Admiralty Division of the High Court of Justice (s. 11; cf. *Harling v. Harling*) (*c*). The appeal is by way of motion under the Rules of the Supreme Court (O. LIX. r. 4A; see *Swoffer v. Swoffer*) (*d*). Notice of motion must be served eight days before the day named for the hearing on every party "directly affected," while the appeal must be entered within twenty-one days of the making of the order. And from any original order under the Act, or the refusal of any such

(*aa*) [1909] 1 K. B. 688; 78 L. J. K. B. 361; 100 L. T. 220; 25 T. L. R. 212.

(*b*) (1898) 62 J. P. 568; 42 Sol. J. 739.

(*c*) (1896) 74 L. T. 559; 60 J. P. 377.

(*d*) [1896] P. 131; 65 L. J. P. 82

Appeal
—*contd.*

order, no appeal lies to the *King's Bench* Division by way of special case or otherwise (*Manders v. Manders*) (e); but, on the making of a committal order to enforce payment of arrears due under an original order, such an appeal would lie (*Ruther v. Ruther*) (f). No appeal from an order to enforce payment of arrears lies, however, to the *Probate, Divorce, and Admiralty* Division (*Griffiths v. Griffiths*) (ff). It is the duty of the justices' clerk to take a note of the evidence and of the reasons for the decision (*Robinson v. Robinson*) (g); and the Probate Court will accept the note so taken as being *prima facie* a complete statement of what took place in the court below. Two copies of the notes should be supplied together with the grounds of the judgment (*Cobb v. Cobb* (No. 1)) (h). Although, if the notes are incomplete, they may be supplemented by an affidavit as to what actually occurred, fresh evidence will not, as a rule, be received (*Snape v. Snape*) (i). Unless the parties agree to a note being taken by a shorthand writer, the usual note must be taken by the clerk; and, if a shorthand note be taken, the transcript must be certified by the clerk as correct, at no extra expense to the parties (*Royle v. Royle*) (ii). Where the wife (though unsuccessfully) seeks to support an order of justices in her favour, she is entitled to costs (*Piper v. Piper*) (k). As to a wife's costs where there is resumption of cohabitation after the lodging of an appeal against the dismissal of her application, see *Partington v. Partington* (kk).

Maintenance at Instance of Guardians.

Application
by guardians
against
husband.

When a married woman requires relief *without her husband*, the guardians or overseers may apply to justices in petty sessions having jurisdiction in the union or

(e) [1897] 1 Q. B. 474; 66 L. J. Q. B. 296; 45 W. R. 287; 61 J. P. 105.

(f) *Ante*, p. 558.

(ff) (1909) 53 S. J. 504; 25 T. L. R. 544; 73 J. P. 391.

(g) [1898] P. 153; 67 L. J. P. 77; 78 L. T. 292.

(h) [1900] P. 145; 69 L. J. P. 52; 64 J. P. 200.

(i) (1898) 62 J. P. 153.

(ii) [1909] P. 24; 78 L. J. P. 34; 99 L. T. 882; 73 J. P. 40; 25 T. L. R. 84.

(k) *Ante*, p. 550.

(kk) (1909) 25 T. L. R. 305; 73 J. P. 200.

parish, and the latter may summon the husband to show cause why an order should not be made upon him to maintain his wife (31 & 32 Vict. c. 122, s. 33). These justices, or other justices acting for the same petty sessional division (39 & 40 Vict. c. 61, s. 19), after hearing the testimony of the wife, or such other evidence as they may deem sufficient, may then *order* the husband to pay such sums, weekly or otherwise, towards the relief of his wife as they may deem to be proper. The amount of any arrears due under the order will be recoverable as a *civil debt* under the Summary Jurisdiction Acts (*ante*, p. 118).

Amount recoverable as a civil debt.

The sum is to be ordered to be paid "towards the cost of the relief of the wife" and must not be assessed as though provision were being made for her in the nature of "alimony." She must be treated as a pauper; but the order may be made before the guardians have fixed the amount to be permanently allowed by them (*Dinning v. South Shields Union*) (l).

The court may, at any future time, *revoke* the order, if circumstances have arisen to warrant the revocation.

Revocation of order.

The justices must not make an order under this section upon a husband to maintain his wife if they are satisfied that he has ceased to cohabit with her in consequence of her adultery (*Culley v. Charman*) (m). Indeed, in one case, a wife, being deserted by her husband, of whom she had heard nothing for many years, went through the form of marriage with another man with whom she continued to cohabit for a time after learning that her husband was still alive; it was held that, as she had committed adultery which had not been condoned, no order could be made upon the husband (*Mitchell v. Torrington Union*) (n). The mere fact that the husband is willing that his wife should return to him is not sufficient to oust the jurisdiction of the justices, who must decide whether or not the wife was *justified* in her refusal to return by reason of adultery, ill-usage, or gross misconduct on the part of her husband (cf. *Fordham v. Young* (o); *Thomas v. Alsop*) (p).

Circumstances in which order may be made.

(l) (1884) 13 Q. B. D. 25; 53 L. J. M. C. 90; 48 J. P. 708; 50 L. T. 446.

(m) (1881) 7 Q. B. D. 89; 50 L. J. M. C. 111; 45 L. T. 28; 45 J. P. 768; 29 W. R. 803.

(n) (1897) 76 L. T. 724; 61 J. P. 598 (and see *post*, p. 923).

(o) (1889) 53 J. P. 133.

(p) (1870) L. R. 5 Q. B. 151; 39 L. J. M. C. 43; 21 L. T. 715.

It may be added that an order under this statute was held to be no bar to proceedings for a deserted wife's maintenance order under the Married Women (Maintenance in Case of Desertion) Act of 1886 ; so that, if the wife ceased to be chargeable, she might commence proceedings under the Act last referred to, although the order under 31 & 32 Vict. c. 122 remained unrevoked (*Kershaw v. Kershaw*) (q).

Application
by guardians
against wife.

So, too, where the husband of any woman *having separate property* becomes chargeable to a union or parish, justices in petty sessions may, upon the application of the guardians or overseers, issue a summons against the wife, and an order may be made upon and enforced against her, requiring her to contribute towards the cost of the relief of her husband in like manner as though the application had been against a husband for the maintenance of his wife (45 & 46 Vict. c. 75, s. 20).

Application
by guardians
in respect of a
lunatic wife.

Cf. *post*,
p. 785.

Where a married woman who is a *lunatic* becomes chargeable, and is removed to an asylum, the guardians or overseers may apply to any *two justices* having jurisdiction in the place where the lunatic is chargeable, and these justices may summon the husband *to appear before them* to show cause why an order should not be made upon him to make a payment weekly or otherwise for her maintenance. If an order is made, the amount due thereunder will be recoverable as a *civil debt* (*ante*, p. 118 ; 13 & 14 Vict. c. 101, s. 5 ; 39 & 40 Vict. c. 61, s. 20).

Order to Protect a Wife's Property.

Wife's protec-
tion order.

A wife *deserted by her husband* may, at any time after such desertion, apply to justices in petty sessions for an order to *protect any money or property she may acquire* by her own lawful industry, and property which she may become possessed of after such desertion. If the justices are satisfied that the *desertion was without reasonable cause*, and that the wife is *maintaining herself by her own industry or property*, they may make an order protecting the earnings and property of the wife against her husband or his creditors, and such earnings and property will thenceforth belong to the wife as if she were a *feme sole*. The application must be made to justices having jurisdic-

tion in the place of the wife's residence (*R. v. Plymouth JJ.*) (*r*). As to the procedure, see 20 & 21 Vict. c. 85, s. 21; 27 & 28 Vict. c. 44; and as to what constitutes "desertion," see *ante*, p. 548.

But protection orders under these statutes are now of rare occurrence, as it has been provided that all property which accrues to a married woman, including any wages or earnings acquired by her in any separate trade or employment, shall belong to her as though she were unmarried, and that she may bring any civil or criminal proceedings against any person, including her husband, *for the protection and security of her property* (45 & 46 Vict. c. 75, ss. 1, 2, 5, 12).

Such orders
rarely applied
for.

A wife may, therefore, under some circumstances, take not only civil but even criminal proceedings against her husband, the husband being entitled also to institute similar proceedings against his wife (*cf.*, *e.g.*, *post*, p. 668).

Criminal Proceedings.

But a wife cannot take criminal proceedings against her husband in respect of property *while they are living together*; "nor while they are living apart, as to or concerning any act done by the husband *while they were living together* concerning property claimed by the wife, *unless* such property shall have been wrongfully taken by the husband *when leaving or deserting*, or about to leave or desert, his wife." So, too, "*a wife* doing any act with respect to the property of her husband, which, if done by the husband with respect to the property of the wife, would make the husband liable to criminal proceedings by the wife under this Act, shall *in like manner be liable* to criminal proceedings by her husband" (45 & 46 Vict. c. 75, ss. 12, 16).

Criminal proceedings by
husbands or
wives.

The husband or wife of the defendant may be called as a witness either for *the prosecution* or defence, *and without the defendant's consent* (*ante*, p. 174).

A wife *living with her husband* cannot, therefore, be convicted of stealing his goods; nor if she give them to a third party can the latter be charged with the theft. The presumption is that she had authority for what she did; though this inference may be rebutted so far as the

receiver is concerned, if he knew that she acted without authority. But as to "receiving," see further, *post*, p. 873.

However, there is no presumption that the husband consented to the taking away of his goods, if the wife has eloped with an adulterer; and, if any part of the husband's property were carried off by arrangement between the pair, this would, apart from statute, be simply theft on the part of the adulterer (*R. v. Flatman*) (s).

Crimes committed by a wife in her husband's presence--
"coercion."

According to the ancient doctrine of the law, if a woman commit theft, burglary, or forgery *in the presence of her husband* she is presumed to have acted under his coercion, and to be innocent (*R. v. Torpey*) (t). This, however, is only a presumption, and may be rebutted by showing that she was not coerced in point of fact. It is, moreover, very doubtful to what offences the doctrine extends. It does not extend to treason, murder, manslaughter, or perjury, and probably not to robbery, though it does extend to uttering counterfeit coin, and probably to misdemeanours generally (cf. Stephen's "Digest of Criminal Law," 6th edit., p. 23).

The mere fact that the parties charged with a crime are married does not, in itself, give rise to a presumption of compulsion by the husband (*Brown v. A.-G. of New Zealand*) (u); and, even although it may also appear that the husband was present during the perpetration of the crime, yet if the wife has taken a principal part in the commission of the offence, as where the crime charged is that of keeping a bawdy-house, she is equally liable with her husband (cf. *R. v. Manning*) (x).

Where offence is non-indictable.

As regards *non-indictable* offences, cognizable by courts of summary jurisdiction, a married woman has always been held answerable for herself. A husband and wife may be jointly charged and jointly or severally convicted. But, in any case, if a wife be sentenced to pay a fine, she must herself provide for the payment or undergo the alternative imprisonment, as her husband's goods cannot be levied upon for the amount.

As to charges of "conspiracy" preferred against husband and wife, see *ante*, p. 396.

(s) (1880) 42 L. T. 159; 14 Cox, 396; 44 J. P. 314.

(t) (1871) 12 Cox, 45; and see 15 Cox, 771.

(u) [1898] A. C. 234; 67 L. J. P. C. 7; 77 L. T. 414.

(x) (1849) 2 C. & K. 903.

As to criminal proceedings against husband or wife not in respect of *property*, see *ante*, p. 171, and *post*, p. 668.

INDECENCY.

Indictable Offences.

The commission of an act of gross indecency in a public place amounts to a misdemeanour at common law, and, in case of an adult, is not triable summarily. Indecency at common law.

“Everyone commits a misdemeanour who does any grossly indecent act in any *open and public place* in the presence of *more persons than one*; but it is uncertain whether such conduct in a public place amounts to a misdemeanour if it is done when no one is present, or in the presence of one person only. A place is public within the meaning of this article if it be so situated that what passes there can be seen by any considerable number of persons if they happen to look” (Stephen’s “Digest of Criminal Law,” 6th edit., article 190).

As instances of public places may be cited—an open place out of sight of the public highway, to which the public had no right of access, but where the public were in the habit of trespassing (*R. v. Wellard*)(*y*)—the interior of a public urinal by the side of a footpath in Hyde Park (*R. v. Harris*)(*z*); and see *R. v. Saunders*)(*a*).

It is now, also, provided by *statute*, as to acts committed by two or more *male* persons, as follows:—Any male person who, *in public or private*, commits or is party to the commission of, or procures or attempts to procure the commission by any male person of, any *act of gross indecency with another male person*, shall be guilty of a misdemeanour. [Imprisonment, two years.] (48 & 49 Vict. c. 69, s. 11.) The offence of “procuring” may be complete although the person who procures the commission of the offence is himself the person with whom it is committed (*R. v. Jones and Bowerbank*)(*b*). The offence, in case of an adult, is triable at assizes only.

Indecency between two or more male persons.

(*y*) (1885) 14 Q. B. D. 63; 54 L. J. M. C. 14; 51 L. T. 604; 49 J. P. 296.

(*z*) (1871) L. R. 1 C. C. R. 282; 40 L. J. M. C. 67; 24 L. T. 74.

(*a*) (1876) 1 Q. B. D. 15; 45 L. J. M. C. 11; 33 L. T. 677.

(*b*) [1896] 1 Q. B. 4; 73 L. T. 584; 65 L. J. M. C. 28; 44 W. R. 110.

The wife of the person charged may be called as a witness either for the *prosecution* or defence, *and without the consent of the person charged* (*ante*, p. 173). It would seem that if one of the male persons was a child under the age of sixteen years, the *procedure* of the Children Act, 1908, would apply (see *ante*, p. 379).

PUNISHMENT
OF INCEST
ACT, 1908.

A male who wittingly has (or attempts to have) carnal knowledge of his *granddaughter, daughter, sister, or mother*, with or without her consent, is guilty of a misdemeanour triable, in case of an adult, at assizes only. A female over sixteen who "with consent permits" such intercourse with her *grandfather, father, brother, or son* is guilty of a like offence (8 Edw. 7, c. 45, ss. 1, 2). "Brother" and "sister" include the *half-blood*, and the Act applies although the relationship be *not* traced through *lawful* wedlock (*ib.* s. 3). Proceedings must be heard *in camera* and be commenced by the Director of Public Prosecutions or with the sanction of the Attorney-General (*ib.* ss. 5, 6). Section 4 of 61 & 62 Vict. c. 36 (*post*, p. 1074), as to the calling of a wife or husband as a witness, applies (*ib.* s. 4 (iv.)). The jury, while acquitting of this offence, may convict under s. 4 or s. 5 of 48 & 49 Vict. c. 69; see *ante*, pp. 364, 365 (*ib.* s. 4 (iii.)). And, on a charge of rape, the jury may convict of this offence; see *post*, p. 869. The Vexatious Indictments Acts apply (*ante*, p. 133).

Publishing or
exposing
indecent
writings or
prints.

It is a common law misdemeanour, punishable on *indictment* only, to print or publish, or expose for sale, or to public view, any indecent writing or print, or to make public any indecent exhibition, and it is not a sufficient defence that there was no intention to corrupt the public morals (*R. v. Hicklin*) (c). As to the search for and destruction of such obscene matter, see *post*, p. 569.

As to INDECENT ASSAULTS, see *ante*, p. 287.

Summary Jurisdiction.

Exposing
person in
public with
intent to
insult a
female.

It is an OFFENCE wilfully, openly, lewdly, and obscenely to expose the person in any street, road, or public highway, or in view thereof, or in any place of public resort, *with intent to insult any female* (5 Geo. 4, c. 83, s. 4). As to punishment, &c., see VAGRANTS (*post*, p. 926).

Prostitute
behaving
indecently.

It is, too, an OFFENCE for a common prostitute to behave

(c) (1868) L. R. 3 Q. B. 360; 37 L. J. M. C. 89.

in public in a riotous or indecent manner. As to punishment, &c., see VAGRANTS (*post*, p. 926).

In urban and other districts to which the provisions of the Town Police Clauses Act are applicable, it is an OFFENCE for any person wilfully and indecently to *expose his person* to the annoyance of the residents or passengers, provided that such exposure takes place in a *street*, *i.e.*, in any road, square, court, alley, thoroughfare, or public passage, but not a spot from which the public may be shut off by the owner of the soil (10 & 11 Vict. c. 89, s. 28).

Exposing person in a "street" within Town Police Clauses Act.

It would seem sufficient to show that any *one* resident or passenger was subject to annoyance (*cf.* *Innes v. Newman*) (*d*).

As to *procedure* under the Act, see *post*, p. 772. In districts to which Part VII. of the Public Health Act, 1907, has been APPLIED, places of public resort or recreation grounds belonging to the authority, and unfenced ground adjoining any street in an urban district, are to be deemed "streets" for the purpose of this offence (7 Edw. 7, c. 53, s. 81).

PENALTY.—FINE, not exceeding 2*l.*, and, in default of distress, imprisonment, *without hard labour*, according to scale (p. 111) ; or, IMPRISONMENT, *without hard labour*, for not more than FOURTEEN DAYS (*cf.* *ante*, p. lxxiii).

Penalty.

Within districts to which the Town Police Clauses Act applies, a similar PENALTY is imposed on prostitutes who, to the annoyance of the residents and passengers, loiter and importune passengers in a *street* for the purpose of prostitution (10 & 11 Vict. c. 89, s. 28). As to the Metropolitan Police district, see 2 & 3 Vict. c. 47, s. 54. In districts to which Part VII. of the Public Health Act, 1907, has been APPLIED, places of public resort or recreation grounds belonging to or under the authority, and unfenced ground adjoining any street in an urban district, are to be deemed "streets" for the purpose of this offence (7 Edw. 7, c. 53, s. 81).

Prostitutes soliciting in a street within Town Police Clauses Act.

Within districts to which the Town Police Clauses Act applies, a similar PENALTY is, too, imposed on any person who, to the annoyance of the residents or passengers in a *street*, sings any profane or obscene song or

Obscene language in a street within Town Police Clauses Act.

(*d*) [1894] 2 Q. B. 292 ; 63 L. J. M. C. 198 ; 70 L. T. 689 ; 58 J. P. 543 ; 42 W. R. 573.

ballad, or uses any profane or obscene language (10 & 11 Vict. c. 89, s. 28). In districts to which the Public Health Act, 1907, has been APPLIED, the definition of "street" is extended (*vide supra*).

Exposing
obscene
prints, &c.

It is an offence to expose to view in any highway, shop-window, &c., any obscene print, picture, or other indecent exhibition. As to punishment, &c., see VAGRANTS, (*post*, p. 926).

Selling or
exhibiting
obscene books,
&c., in a street
within Town
Police Clauses
Act.

And there is further provision for districts in which the Town Police Clauses Act is in force, it being declared to be an offence for any person, to the annoyance of the residents or passengers, publicly to *offer for sale or distribution*, or exhibit to public view, *in a street*, any profane, indecent, or obscene book, paper, print, drawing, or representation (10 & 11 Vict. c. 89, s. 28). In districts to which the Public Health Act, 1907, has been APPLIED, the definition of "street" is extended (*vide supra*).

PENALTY.—FINE, not exceeding 2*l.*, and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111); or, IMPRISONMENT, *without* hard labour, for not more than FOURTEEN days (see further as to procedure, *post*, p. 772, and *R. v. Hopkins*, *ante*, p. 414).

INDECENT
ADVERTISE-
MENTS ACT,
1889.

Affixing,
delivering, or
distributing
indecent
pictures,
advertisements, &c.

There is, too, general provision made by the Indecent Advertisements Act, 1889, which declares it an offence (a) to affix to or inscribe on any house, building, wall, gate, &c., or any other thing whatsoever, so as to be visible to a person being in or passing along a street, public highway, or footpath, any *picture, or printed or written matter, of an obscene or indecent nature*; (b) to affix to or inscribe on a public urinal such picture or matter; (c) to deliver or attempt to deliver or exhibit such picture or matter to any inhabitant, or to any person in a street, public highway, or footpath; (d) to throw such picture or matter down the area of a house, or to exhibit it to public view in the window of a house or shop (52 & 53 Vict. c. 18, s. 3).

Advertisements relating to diseases arising from sexual intercourse are declared to be "indecent" so far as (a) and (b) are concerned, and also when the offensive matter is delivered or attempted to be delivered to persons in a street, highway, or footpath (*ib.* s. 5).

PENALTY.—FINE, not exceeding 2*l.*, and, in default of *distress*, imprisonment, *without* hard labour, according to

scale (p. 111); *or*, IMPRISONMENT, with or without hard labour, for not more than ONE MONTH.

It is a still more serious offence to give or deliver to another person such picture or matter *with intent* that it may be affixed, inscribed, delivered, or exhibited as aforesaid (*ib.* s. 4).

PENALTY.—FINE, not exceeding 5*l.*, and, in default of distress, imprisonment, *without* hard labour, according to scale (p. 111); *or*, IMPRISONMENT, with or without hard labour, for not more than THREE MONTHS.

A constable may ARREST, without warrant, any person found committing an offence against the Indecent Advertisements Act, 1889 (s. 6).

Two justices or a stipendiary magistrate, upon complaint on oath that any *obscene* books, prints, pictures, papers, or representations, are kept in any house, shop, or other place, within their jurisdiction, for the purpose of sale or distribution, exhibition for purposes of gain, lending upon hire, or being otherwise published for purposes of gain, AND that one or more of such books, prints, &c., has or have been, in fact, so sold or exhibited, at or in connection with such shops, &c., may, by special WARRANT, direct any constable to enter such house, shop, or place (in the daytime, by force if necessary) and seize all such articles (20 & 21 Vict. c. 83, s. 1). The magistrates must, however, be satisfied that the books, prints, &c., are of such a character that their publication would amount to a misdemeanour (*ante*, p. 566).

The occupier of the house, shop, or place, must thereupon be summoned to appear *within seven days* before the stipendiary magistrate, or two justices in petty sessions, to show cause why the articles seized should not be destroyed (*ib.*).

If such occupier, or some person claiming to be the owner of the articles, does not appear, *or*, if he does appear, AND the justices are satisfied that any of the articles are of the character stated in the warrant and were kept for any of the purposes aforesaid, the justices are required to ORDER the destruction of the articles seized (except such as may be preserved to be used as evidence in subsequent proceedings) at the expiration of seven days from the date of the order, unless notice of appeal be previously given. The articles are in the mean-

Giving indecent pictures, advertisements, &c., to others to be affixed, delivered, or distributed.

Arrest without warrant.

Warrant of justices directing search for and seizure of obscene matter sold or distributed, or published for purposes of gain ; OBSCENE PUBLICATIONS ACT, 1857.

Summons to occupier of premises where obscene matter is seized.

Order of justices directing destruction of articles seized.

time to be impounded. The order must show on the face of it that the publication of the articles amounted to a misdemeanour, and was fit to be prosecuted as such (*R. v. Bradlaugh*) (*e*). The proceedings are of a *criminal*, and not of a civil, nature, so that they are not abated by the death of the informant (cf. *R. v. Truelove*) (*f*).

If the justices think that the articles seized are not of the character stated in the warrant, or were not kept for any of the purposes aforesaid, they must forthwith direct the articles to be restored to the occupier of the place where they were seized.

Appeal.

Any person aggrieved by any act or determination of justices in or concerning the execution of the Act may APPEAL to quarter sessions (20 & 21 Vict. c. 83, s. 4).

INDUSTRIAL SCHOOLS.

As to the making and effect of orders directing children to be sent to certified industrial schools, see *ante*, pp. 181 *et seq.*

Refusal to conform to rules.

Form 10.
p. 1145.

If a child, *twelve years of age or upwards*, detained in such a school, is guilty of a *serious and wilful* breach of the rules of the school, or of inciting other inmates to such a breach, he is liable, on *summary conviction*, to be sent to a reformatory school and there detained (8 Edw. 7, c. 67, s. 71 (ii.)). As to a refusal to conform to the rules of a "day" industrial school, see Order in Council (April 2, 1909), VIII., APPENDIX, *post*, p. 1158; FORM 11, p. 1146, and Sch. B. (N.) p. 1156.

Escape from school.

If a child escapes from an industrial school he may, at any time before the expiration of his period of detention, be apprehended without warrant and brought before a court of summary jurisdiction having jurisdiction in the county or place where he is found, or in the county or place where the school is situate (*ib.* s. 72 (ii.)).

Form 10.
p. 1145.

On summary conviction he would be liable to be brought back to the school; or, *if of the age of twelve years or upwards*, to be sent to a reformatory school. The period of absence is not to be reckoned in the period of detention, and if the period of detention thus extend

(*e*) (1878) 3 Q. B. D. 509; 47 L. J. M. C. 105; 43 J. P. 125.
(*f*) *Ante*, p. 32.

beyond the statutory limits, he may nevertheless be detained (*ib.* s. 72 (ii.), (iii.), (v.)). These enactments apply when a child "on licence" escapes or refuses to return; and, on revocation of the licence, there is provision, in case of failure to return, for summoning a parent or guardian (after information on oath) to produce the child, under a penalty of 1*l.* (*ib.* s. 67 (iv.), (v.), (vi.)).

Revocation
of licence.

Any person commits an OFFENCE who

(a) Knowingly assists or induces, directly or indirectly, a child detained in, or placed out on licence from, a certified school to escape from the school, or from any person with whom he is placed out on licence; or,

Assisting in
escape, or
harbouring
escaped child.

(β) Knowingly harbours, conceals, or prevents from returning to school, or to any person with whom he is placed out on licence, a child who has so escaped, or knowingly assists in so doing (*ib.* s. 72 (vi.)).

PENALTY.—FINE, not exceeding 20*l.*, recoverable by distress, and, in default, imprisonment without hard labour, according to scale (p. 111); *or*, IMPRISONMENT for two MONTHS, with or without hard labour.

As to *absolute* or *conditional* discharge, by order of the Secretary of State, see *ib.* s. 69 (i.).

As to the offence of wilfully neglecting to attend a *day* industrial school, and as to the offence of assisting or inducing a child not to attend such a school, or harbouring a child who has neglected to attend, see Order in Council (April 2, 1909), IX., APPENDIX, *post*, p. 1158; FORM 11, p. 1146; and Sch. B. (N.), p. 1156.

Wilfully
neglecting
to attend
"Day" In-
dustrial
School.
Assisting or
harbouring
child.

INFANT LIFE PROTECTION.

CHILDREN ACT, 1908 (PART I.).

By the above Act special provision is made for the better protection of infant life, and special duties are thereby imposed on the "local authority," that is to say, in the county of London the County Council, in the City of London the Common Council, and elsewhere the Guardians of the Poor Law Union. The expenses incurred by such "authorities" are to be paid, respectively, out of the county fund as general county expenses, out of the general rate, and out of the common fund (s. 10).

Notice to be given by persons receiving infants for reward.

If a person undertakes "for *reward* the *nursing and maintenance* of one or more infants under the age of *seven years*" apart from their (or having no) parents he must within *forty-eight hours* of the "reception" give notice in writing to the "local authority"; but the obligation arises only when the period for which an infant is received *exceeds forty-eight hours*. If the child is already in the care of such person without reward, the entering into the undertaking is to be treated as the "reception." The notice must state the name, sex, date and place of birth of the infant, and the name and address of the person from whom it has been received. It must further state the name of the "person receiving" the infant and the dwelling within which it is being kept (8 Edw. 7, c. 67, s. 1 (i.), (ii.), (iii.)). As to proof of age, see s. 123 (ii.), *ante*, pp. 184, 379.

Notice of change of residence.

The person who has "undertaken the nursing and maintenance" must give the "local authority" written notice of any *change of his residence* within *forty-eight hours*; and, if he moves into *another district*, he must give to the authority of that district all the notices required to be given as on a "first reception" (*ib.* s. 1 (iv.)).

Notice of death or removal.

In case of the *death* of the infant or of its *removal* from his care, notice in writing must be given within *forty-eight hours*; and, in the event of removal, notice must also be given of the name and address of the person to whose care the infant has been transferred (*ib.* s. 1 (v.)).

Notice to coroner within 24 hours.

In case of death, the person having the care of the infant must *within twenty-four hours* give notice in writing to the *coroner* of the district within which the body lies, and the coroner is required to hold an inquest unless satisfied that it is unnecessary on production of a medical certificate given by a practitioner who attended the infant in its last illness (s. 6).

Removal of infant improperly kept.

On the application of any person authorized to execute the provisions of this part of the Act, a justice or a "local authority" may, in certain circumstances, issue an "ORDER" directing him to *remove* any infant, in respect of which notice is required, to a "place of safety" (*i.e.*, any workhouse, &c., or other suitable place, the occupier of which is willing temporarily to receive it) until it can be "restored to its relatives or be otherwise lawfully disposed of." This may be done where the infant is

kept (a) in overcrowded, dangerous, or insanitary premises; or (β) by one who by reason of negligence, ignorance, inebriety, immorality, criminal conduct, "or other similar cause" is unfit to have care of it; or (γ) by any person or in any premises in contravention of this part of the Act (s. 5).

Certain persons are, moreover, PROHIBITED from receiving infants, in respect of which notice is required, without the "*written sanction*" of the "local authority." Thus, without this sanction, such infants cannot be kept (a) by any person from whose care an infant has been "removed;" or (β) in "dangerous or insanitary" premises from which any infant has been "removed"; or (γ) by a person convicted under Part II. of the Act, which relates to the "Prevention of Cruelty to Children, &c.," or of any offence under the Prevention of Cruelty to Children Act, 1904 (s. 3).

The "local authority" is directed to make *inquiry*, from time to time, whether there are any persons residing in their district who undertake the nursing and maintenance of infants in respect of whom notice is required; and, if such persons be found, *the authority must appoint one or more "visitors"* to examine the infants and the premises where they are kept or to "give any necessary advice or directions as to their nursing and maintenance." Local authorities may combine for the purpose of executing the Act; and, in addition to or in lieu of appointing "visitors," suitable persons may be authorized in writing to exercise the powers of visitors. Where infants have been placed out to nurse by "any philanthropic society," the "society" may be authorized to exercise such powers in respect of those infants (s. 2).

The "local authority" may also "*fix the number*" of infants under the age of seven years which may be kept in any dwelling in respect of which a notice has been received" (s. 4).

The person keeping an infant in respect of which notice is required is deemed to have *no interest* in the life of the child within the Life Assurance Act, 1774; and it is made an offence for such person directly to insure or attempt to insure the child, or for any company, society, or person knowingly to issue, or attempt to procure the issuing of, a policy (s. 7).

In certain cases "sanction" of "local authority" necessary to reception of infants.

Cf. *ante*, p. 371.

Duties of "local authority."

Appointment of "infant protection visitors."

Fixing number of infants to be received.

Avoidance of policies on lives of infants kept for reward.

Exemptions. A "local authority" may *exempt* from being visited, either unconditionally or subject to such conditions as they think fit, "any particular premises" within their district (s. 2 (iv.)). And the provisions of the Act do not extend to "relatives" or "legal guardians," that is to say, guardians appointed, according to law, by deed or will, or by order of a court of competent jurisdiction (s. 11). "Relatives" here means grandparents, brothers, sisters, uncles and aunts, by consanguinity or affinity; and, in the case of illegitimate infants, the persons who would be so related if the infant were legitimate (*ib.*). Nor do these provisions extend to persons who undertake the nursing or maintenance under "any Act for the relief of the poor or of any order made under any such Act; or to hospitals, convalescent homes, or institutions, established for the protection and care of infants, and conducted in good faith for *religious or charitable purposes, or boarding schools* at which efficient elementary education is provided" (*ib.*).

Sending of notices. Notices may be sent *by post* in a *registered* letter addressed to the clerk of the local authority or to such other person as the authority may appoint; or, in the case of a notice to a coroner, to the coroner. Or the notice may be delivered at the office of the local authority, or, in the case of a notice to a coroner, at his office or residence (s. 8 (ii.)).

Justice's warrant to enter premises. If a visitor or other authorized person is refused admittance in contravention of the Act or has reason to believe that infants under seven are being kept in contravention of the Act, he may apply to a *justice*, who (if satisfied by written information on oath that there is reasonable ground for believing that an offence has been committed) may grant a *warrant* authorizing such visitor or other person to *enter* the premises for the purpose of ascertaining whether any offence has been committed (s. 2 (vi.)).

The following OFFENCES are created by the Act, and the accused must, at the outset, be given the OPTION OF TRIAL BY JURY:—

(a) *Failing* to give to the "local authority" any notice as required to be given by persons who undertake the nursing and maintenance of an infant or infants. If the consideration for nursing and maintenance consisted in whole or in part of a lump sum, the

defendant, in addition to any other penalty, is liable to forfeit that sum or such less sum as the court may deem just. The sum so forfeited must be applied for the benefit of the infant as the court may direct; and the order of forfeiture may be enforced as if it were an order made on complaint (*ante*, p. 118; s. 1 (vii.)).

OFFENCES
under the
Children Act,
1908 (Part I.)
—*contd.*

- (β) Any person having the care of an infant and required to give notice, *failing* to give to the *coroner* written *notice* of death within twenty-four hours (s. 6 (ii.)).
- (γ) Any person *refusing to comply* with an order of a justice or of the "local authority" directing the *removal* of an infant improperly kept, upon such order being produced and read over to him; or *obstructing*, or causing to be obstructed, the visitor or other authorized person in the execution of the order (s. 5 (ii.)). If made by a justice, the order may be enforced by the visitor or any constable; if made by the "local authority," the visitor or other person may apply to any justice for an order directing the removal of the infant, and this order may be enforced by the visitor or by any constable (*ib.*).
- (δ) Any person keeping (or causing to be kept) an infant without the *written sanction* of the "local authority," contrary to s. 3, *i.e.*, where the person has been convicted or an infant removed from his care, or the infant is kept on premises from which any infant has been removed on account of their being dangerous or insanitary (s. 3; *ante*, p. 572).
- (ε) Person keeping any infant *in excess* of the number fixed by the "local authority" as the number which may be kept in a dwelling (s. 4).
- (ζ) Person, who keeps an infant in respect of which notice is required, directly or indirectly *insuring* or attempting to insure *the life* of such an infant; or a company within the Life Assurance Companies Acts, 1870 to 1872, or any other company, society, or person knowingly issuing, or procuring or attempting to procure to be issued, to, or for the benefit or on behalf of, such a person a policy on the life of such an infant (s. 7).
- (η) Person, who undertakes the nursing and mainten-

ance of infants required to be registered, *refusing* to allow a *visitor* or authorized person to *visit* or *examine* the infants or the premises (s. 2 (v.)).

(θ) Occupier of premises in respect of which a *warrant* has been granted, or any other person, *obstructing*, or causing to be obstructed, the visitor or authorized person acting in pursuance of a justice's warrant to enter (s. 2 (vi.)).

(ι) Person required to give a notice *knowingly* or *wilfully* making, or causing or procuring any other person to make, any *false* or *misleading* statement in such notice (s. 8 (i.)).

PENALTY.—FINE, not exceeding 25*l.*, and, in default of distress, imprisonment *without* hard labour, according to scale (p. 111); or IMPRISONMENT, *without* hard labour, for a term not exceeding SIX MONTHS. The court may also ORDER any infant in respect of which the offence was committed to be *removed* to a workhouse, police station, hospital, or other "place of safety," the occupier of which is willing to receive it (ss. 9, 131).

Appropriation of penalties.

The fines must (notwithstanding any other Act) be paid to the "local authority" and be applied to the purposes to which the fund or rate out of which the expenses of the "local authority" are to be defrayed is applicable (s. 9 (ii.)): Cf. *ante*, p. 204.

INFECTIOUS DISEASES.

INFECTIOUS DISEASE (NOTIFICATION) ACTS, 1889 AND 1899

(52 & 53 Vict. c. 72; 62 & 63 Vict. c. 8).

The earlier statute originally extended to the metropolitan area, and to such urban, rural, or port sanitary districts as might, after due notice, *adopt* its provisions. It now, however, has been extended to every urban, rural, and port sanitary district (62 & 63 Vict. c. 8, s. 1). And as to London, see 54 & 55 Vict. c. 76, ss. 55—57.

Enumeration of infectious diseases.

It is provided that, where an inmate of a building used for human habitation is suffering from small-pox, cholera, diphtheria, membranous croup, erysipelas, scarlet fever, scarlatina, typhus, typhoid, enteric, relapsing, continued, or puerperal fever, or any other disease (*e.g.*, measles) in a particular district declared, after at least a week's

notice, to be, temporarily or otherwise, an “infectious disease” within that district, the *head of the family* to which the inmate belongs, or, in his default, the *nearest relative* present, &c., or, in default of relatives, the persons in *charge of or in attendance* upon such inmate, or, in default of such persons, the *occupier of the premises*, must, as soon as he is aware that such inmate is suffering from one of the above diseases, give NOTICE thereof to the medical officer of health of the district.

Notification
necessary.

The word “building” includes boats (other than those of a foreign Government), tents, vans, or sheds used for human habitation; and the word “occupier” includes (*inter alios*) a person in charge or control of a building or of the part of a building in which the patient is, and also the person receiving rents payable by tenants in tenement or lodging houses (52 & 53 Vict. c. 72, ss. 3, 5, 7, 13).

The *medical practitioner* attending the patient must, too, as soon as he becomes aware of the infectious illness, send a CERTIFICATE, with full particulars, to the medical officer of health.

Provisions of *local Acts* relating to notification are (except in Huddersfield) no longer operative (62 & 63 Vict. c. 8, ss. 1, 2).

The notice or certificate may be in writing or print, and may be sent to a medical officer of health by being delivered to him or left at his office or residence, or sent by post to him at his office or residence (52 & 53 Vict. c. 72, s. 8).

Any person who fails to give a notice or certificate so required as aforesaid becomes liable to a—

PENALTY not exceeding 2*l.*, and, in default of *distress*, imprisonment *without* hard labour, according to scale (p. 111). A person not required *in the first instance* to give the notice is not liable, if he satisfies the court that he reasonably believed it to have been given.

Penalty for
omitting to
notify or give
certificate.

INFECTIOUS DISEASE (PREVENTION) ACT, 1890

(53 & 54 Vict. c. 34).

This statute originally extended to the metropolitan area (*h*), but the whole Act, or any sections of it,

(*h*) But as to *London*, see now 54 & 55 Vict. c. 76, ss. 58—75

might and still may be ADOPTED by any urban or rural district.

Order to inspect dairy, &c.

A justice having jurisdiction in a place where a dairy (including a farm, farm-house, cow-shed, milk-store, milkshop, or other place from which milk is supplied, or in which milk is kept for purposes of sale) is situate may, if a medical officer of health is in possession of evidence that a person in his district is suffering from an infectious disease (as above defined, p. 576) attributable to milk supplied from such dairy, make an *order* authorizing the medical officer of health to inspect such dairy; and, if the medical officer is accompanied by a veterinary inspector or surgeon, they may inspect the animals also.

Order to discontinue supply of milk.

The medical officer of health must then report to the local authority, who may give notice to the dairyman (cowkeeper, purveyor of milk, or occupier of dairy) to appear before them within a specified time to show cause why they should not ORDER him to discontinue supplying any milk within the district until they withdraw such order.

Disobedience of order.

Any person refusing to permit the medical officer (when so authorized and on production of the justice's order) to inspect a dairy, and the animals also, if he be accompanied by a veterinary inspector or surgeon, or supplying, &c., milk when ordered not to do so by the local authority, is guilty of an OFFENCE (s. 4).

PENALTY.—FINE, not exceeding 5*l.* (and a further penalty of 2*l.* a day so long as the offence continues), recoverable by *distress*, and, in default, imprisonment, *without* hard labour, according to scale (p. 111).

Expenses of disinfecting house.

The clerk to a local authority, on the certificate of the medical officer of health or a duly qualified medical practitioner, may give notice to the owner or occupier of a house (boat, van, &c.) to disinfect the whole or part thereof. If such owner, &c., does not do so, an officer appointed by the local authority, on producing his authority in writing, may enter the house between 10 A.M. and 6 P.M., and, under the superintendence of the medical officer of health, may disinfect the same, and the expenses incurred may be recovered against the owner, &c., before two justices (ss. 5 (i.), (ii.), 17).

Refusing to hand over

A local authority, or their medical officer if generally empowered by them, may, by notice in writing, require

the owner of any bedding, clothing, &c., exposed to infection, to cause the same to be delivered over to the officers of the authority to be disinfected. The PENALTY for failure to comply is a FINE, not exceeding 10*l.*, recoverable by distress as above. The disinfection is to be free of charge; and if any damage is done to the bedding, &c., the local authority must compensate the owner. Any dispute to be settled by two justices (s. 6).

Every person ceasing to occupy any house, room, &c., in which any person has within six weeks previously been suffering from any infectious disease, (a) without having such house, &c., disinfected to the satisfaction of a qualified medical practitioner (as certified by him), *or* (β) without first informing the owner of the existence of the disease, *or* (γ) on being questioned by the owner or any person negotiating for the hire of such house, &c., knowingly making a false answer as to the fact of a person having been there within six weeks previously suffering from an infectious disease, becomes liable to a PENALTY of 10*l.*, recoverable as above (s. 7).

The body of a person dying from an infectious disease must not be retained unburied for more than forty-eight hours in a room used at the time as a dwelling-place, sleeping-place, or work-room, without the written sanction of the medical officer of health, or of a registered medical practitioner. The PENALTY is 5*l.*, and 2*l.* a day so long as the offence continues, recoverable as above (s. 8).

If the medical officer of health or a registered medical practitioner certifies that the removal of the body of a person dying from an infectious disease in a *hospital or place of temporary accommodation for the sick* (except direct to the place of burial or a mortuary), would not be desirable, any one who so removes it commits an offence, and becomes liable to a PENALTY of 10*l.*, recoverable as above (s. 9).

Where the body of a person who has died from an infectious disease is not buried *within forty-eight hours* (unless it is in a room not used at the time as a dwelling-place, sleeping-place, or work-room, or is in a mortuary), a justice, on the application of the medical officer of health, may *order* the body to be removed, at the cost of the local authority, to an available mortuary, and to be buried within a specified time. So, too, if the body is endanger-

bedding, &c.,
for disinfection.

Leaving house
without disinfecting and
notifying the
owner as to
the illness.

Retaining
body un-
buried.

Removing
body from
hospital.

Order as to
removal of
body.

ing the lives of the inmates of the house in which it is, or of any other house; and, in any case, a justice may *order* the *immediate* burial of a person so dying, if he deems it necessary; and, if the friends of the deceased do not undertake the duties of burial, the relieving officer of the district from which the body is removed must do so, and the guardians may recover the cost from the person liable to pay, by application to two justices (s. 10).

Using and
disinfecting
conveyances.

Any person, who hires or uses a public conveyance (except a hearse) for conveying the body of a person so dying, without previously notifying the owner or driver, commits an offence; and the owner or driver, if so notified, commits a like offence in case he does not immediately afterwards provide for disinfection (s. 11).

PENALTY.—FINE, not exceeding 5*l.*, and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111).

Order to
detain
infected
patient in a
hospital for
infectious
disease.

Any justice, upon cause shown, may *order* the detention in a hospital for a specified time (at the cost of the local authority in whose district he acts) of any person therein suffering from an infectious disease, if, on leaving, such person would be likely to spread infection; and a justice may, if necessary, enlarge the period of detention (s. 12).

Casting infec-
tious rubbish
into ashpit,
&c.

Any person who knowingly casts, or causes or permits to be cast, any infectious rubbish (without previously disinfecting it) into any ashpit, &c., is guilty of an OFFENCE punishable by a *fine* of 5*l.*, recoverable by distress as above (s. 13).

Obstructing
officer of local
authority.

And any person who wilfully obstructs any duly authorized officer of the local authority in carrying out the provisions of the Act, or who obstructs the carrying out of an order made by a justice, is liable to a like penalty, and to an additional penalty not exceeding 2*l.* a day so long as the offence continues (s. 16).

Complaint to
be by local
authority.

Penalties are recoverable only on the information or complaint of the local authority or their authorized officer, and are payable to the authority (s. 18).

As to the assignment of powers and obligations to *Port Sanitary Authorities*, see 59 & 60 Vict. c. 20.

And see PUBLIC HEALTH, *post*, pp. 843—847; and FACTORY AND WORKSHOP ACT, 1901, *ante*, p. 461.

INTOXICATING LIQUOR LAWS.

It would be impossible within the limits of the present work to deal adequately with the provisions of the various Licensing Acts so far as they relate to the granting and the renewal of licences for the sale of intoxicating liquors. Before, however, we refer in detail to such offences connected with the liquor traffic as daily occupy the attention of magistrates, it will be advisable to give a general view of the position of justices in relation to the granting and renewal of licences.

Grant of New Licences.

A special session of the justices acting in and for every petty sessional division is held within the *first fourteen* days of the month of FEBRUARY, in every year. The meeting cannot be held in a room in a building licensed for the sale of intoxicating liquors. It is convened by precept of the justices directed to their clerk, requiring him within five days to order the police to give notice of the meeting to every justice and innkeeper, and to publish the notice on the church or chapel door or (if there be none) in some conspicuous place. This session is known as the general annual licensing meeting, and the exact date is fixed at a petty sessions held *at least* TWENTY-ONE DAYS before. At this meeting the justices, who do not in strictness constitute a court, act by a majority of those present, and may grant licences for the purpose of liquor traffic to such persons as they may, "in the exercise of their discretion, deem fit and proper" (9 Geo. 4, c. 61, ss. 1, 2; 2 Edw. 7, c. 28, s. 14 (i.)). In *boroughs* where the acting justices are *less than ten* in number, the justices will act as a body in respect of the granting of these licences; but, if there are *ten or more* acting justices, the matter will be left in the hands of a *committee*, consisting of not less than *three* nor more than *seven* justices (in *county boroughs* of not less than *seven* justices) to be appointed from amongst themselves in the fortnight immediately preceding the period in which the meeting can be held. In a non-county borough *three* justices constitute a "quorum"; and, presumably, *three*

General
annual
licensing
meeting.

General
annual
licensing
meeting
—*contd.*

Adjourned
meeting.

APPLICATION
FOR NEW
LICENCE.
Notices.

Plan of
premises.

Alterations
without
consent.

also in a county borough (35 & 36 Vict. c. 94, s. 38). As to the necessity for CONFIRMATION, see *post*, p. 587.

In addition to the general annual licensing meeting there must also be held "an adjournment thereof" (9 Geo. 4, c. 61, s. 3), the general meeting continuing for all purposes from its commencement to the last moment of the adjourned meeting or meetings (*R. v. Anglesea*) (*i*); (*R. v. Armstrong*) (*k*). The adjourned meeting must be held on some day or days within *one month* of the date of the general meeting and after the giving of notices such as are required for that meeting; but the adjourned meeting must not be held within the five days next after the annual licensing day (*ib.*; 2 Edw. 7, c. 28, s. 14). See *R. v. Bristol JJ.*, cited *post*, p. 591.

Every person intending to apply for a licence or certificate in respect of premises *previously unlicensed* must give *public notice* of such intention in the manner prescribed by the statute (35 & 36 Vict. c. 94, s. 40). That is to say, he must give twenty-one clear days' notice to the police and to the overseers: and post notices, on the church door and on the door of the premises intended to be licensed, on two consecutive Sundays within twenty-eight days before making application. He must also advertise in a local paper as prescribed, and serve notice on the clerk of the licensing justices twenty-one days before the date of the annual meeting (2 Edw. 7, c. 28, s. 18). Failure to comply with preliminary requirements, through inadvertence or misadventure, may be met by adjournment (*ib.* s. 14 (vi.)). If the majority of the justices present are satisfied as to the fitness of the applicant, and of the house which he proposes to occupy, they may, if they are so minded, grant the licence which is sought. If the application is for an "on" licence, twenty-one days before the meeting a *plan* of the premises must be deposited with the clerk of the licensing justices; while, if *alteration* be made in *any* "on" licensed premises, affording increased facilities for drinking, &c., *without consent*, a court of summary jurisdiction may by ORDER made on complaint declare the licence to be forfeited, or direct the restoration of the premises within

(i) (1895) 65 L. J. M. C. 12; 59 J. P. 743.

(k) (1896) 65 L. J. M. C. 35; 12 T. L. R. 159.

a limited time. Appeal would lie against such an order; and, in case of forfeiture, the owner might apply under s. 15 of the Act of 1874, *post*, p. 600 (2 Edw. 7, c. 28, s. 11). The clerk must forthwith give notice of such an order to the *owner* of the premises. To the grant of a new "ON" licence such *conditions* may be attached as seem proper in the public interest, whether as to payments to be made, the tenure of the licence, or any other matter; and such conditions *must* be attached as, having regard to proper provision for suitable premises and good management, seem best adapted "for securing to the public any *monopoly value* which is represented by the difference between the value which the premises will bear, in the opinion of the justices, when licensed, and the value of the same premises if they were not licensed." But the value of profits arising from the sale of non-intoxicants is not to be taken into account; and the amount of any payments imposed must *not exceed* the amount thus required to secure the monopoly value (4 Edw. 7, c. 23, s. 4). The imposition of a condition that the premises shall remain open only during certain specified hours would not deprive justices of power to grant an "occasional" licence (cf. *Groh v. Hesketh*) (*l*). Any person may oppose the granting of the licence, and evidence need not be taken upon oath, though the justices may, it seems, *require* sworn testimony (*R. v. Sharman*) (*m*); but the justices have an absolute discretion to decide as to whom, and in respect of what premises, licences should be granted (*Leeds Corporation v. Ryder*) (*n*), and, in the event of their refusal of the licence, there is no appeal.

Conditions
attached to
"on" licence.

The clerk to the justices is not entitled to demand a fee for administering the oath to a person who appears and objects to the grant of a licence (*Whittuck v. Withy*) (*o*).

It may be observed that not only must the premises be structurally adapted to the class of licence for which a certificate is sought, but they must, except in the case of

Limitation as
to annual
value of
premises.

(*l*) [1908] 1 K. B. 651; 77 L. J. K. B. 481; 98 L. T. 263; 72 J. P. 114.

(*m*) [1898] 1 Q. B. 578; 46 W. R. 367; 67 L. J. Q. B. 460; 78 L. T. 320; 62 J. P. 296.

(*n*) [1907] A. C. 420; 76 L. J. K. B. 1032; 71 J. P. 484.

(*o*) [1907] 2 K. B. 526; 76 L. J. K. B. 773; 96 L. T. 912; 71 J. P. 317.

a number of "off" licences, be of a certain *annual value* prescribed by statute. Thus, *e.g.*, if a full licence or a beer-house licence is required (in respect of premises not licensed before 1872) to sell for consumption "on" the premises, they must, if situate within the City of London or a place subject to the jurisdiction of the London County Council, or within a town of not less than 100,000 inhabitants, be of the annual value of 50*l.* at least; if within a town of more than 10,000 inhabitants, 30*l.*; and elsewhere, 15*l.* (35 & 36 Vict. c. 94, s. 45) (*p*). If the licence is to sell beer "off" (or to sell beer "on" premises licensed before 1872), it can be granted only in respect of premises of the annual value of 15*l.*, provided that they are situate in London, &c., or in a town of more than 10,000 inhabitants. If the town exceeds 2,500 but does not reach 10,000 inhabitants, the limit is 11*l.*; and elsewhere 8*l.* (3 & 4 Vict. c. 61, s. 1).

Premises with a "full" licence prior to 1872 require no qualification as to value, if still licensed, although there may have been a subsequent breach of continuity in the licence (*Igoe v. Shann*) (*q*).

New licence
for a term of
years.

A new "on" licence may be granted for a term not exceeding *seven years*, and such licence will not require renewal, but will lapse at the end of the term, a *transfer* being obtainable at the annual meeting as well as at special sessions. If the holder of such a licence is convicted of any offence committed by him *as such*, the licence may be forfeited on conviction; and, if any "condition" imposed on the grant be not complied with, a court of summary jurisdiction may, on complaint, order that a forfeiture take place (4 Edw. 7, c. 23, s. 4). In the event of forfeiture, the *owner* may seek a temporary authority and transfer as in case of forfeitures under s. 15 of the Act of 1874, *post*, p. 600 (*ib.*).

When
justices'
certificate is
necessary.

As to the necessity for securing a licence or certificate, it may be pointed out that no intoxicating liquor can be sold without an *excise* licence. With the excise licences taken out by *wholesale* dealers (in respect of separate premises exclusively used for the sale of drink) justices

(*p*) If the licence does not authorize the sale of *spirits*, the values are 30*l.*, 20*l.*, and 12*l.* respectively.

(*q*) [1903] A. C. 320; 72 L. J. K. B. 693; 89 L. T. 105; 67 J. P. 333.

have no concern, but, in almost every case where the sale is to be by *retail*, the excise licence could not be obtained except upon the production of a justices' certificate; while, if the latter for any reason become forfeited or void, the former will also at once cease to be effective (35 & 36 Vict. c. 94, s. 63).

There are *five* distinct varieties of "ON" licence issued by the excise for "retail" trade, which, of course, cover consumption either on or off the premises. They are as follows:—

Varieties of
"ON"
licences.

1. The victualler's or full publican's licence, which covers the retail sale, on or off, of beer, spirits, foreign wines, and sweets. It is sometimes known as the "spirit" licence.
2. Beer-house licence, covering the sale of beer and cider. This cannot be held conjointly with a *spirit* licence, nor may spirits in any form be consumed on the premises. But the holder is not disqualified from taking out a wine-house licence (No. 4). Unless he be the keeper of a restaurant or eating-house (2 Edw. 7, c. 28, s. 22), the holder must sleep upon the premises (*R. v. Manchester JJ.*) (*r*), but the fact that he is the mere servant of a brewery company does not *in point of law* prevent him from receiving the licence (*Nix v. Nottingham JJ.*) (*s*). These conditions as to residence, &c., apply also to Nos. 3, 6, and 10.
3. Cider-house licence.
4. Refreshment (or eating) house keeper's wine licence (authorizing sale in less quantity than two gallons, or less than one dozen reputed quart bottles).
5. Sweets, *i.e.*, British wines, mead, &c.

There are also *eight* different licences for sale "OFF" the premises, as follows:—

Varieties of
"OFF"
licences.

6. Beer (including cider and perry) in any quantity less than $4\frac{1}{2}$ gallons at a time.
7. Foreign wine in reputed quart or pint bottles, or sweets (shopkeeper). A sale of foreign wine in any quantity less than two gallons, or one dozen reputed quart bottles, is deemed a selling by "retail."

(*r*) [1899] 1 Q. B. 571; 68 L. J. Q. B. 358; 80 L. T. 531; 63 J. P. 360.

(*s*) [1899] 2 Q. B. 294; 68 L. J. Q. B. 854; 81 L. T. 41; 47 W. R. 628.

Varieties of
"OFF"
licence
—*contd.*

8. Wholesale *beer dealer's* additional (retail) licence. This licence is taken out by wholesale strong beer dealers who wish to sell by retail, *i.e.*, less than $4\frac{1}{2}$ gallons at a time, or two dozen reputed quart bottles.
9. Table beer (not exceeding $1\frac{1}{2}d.$ per quart).
10. Cider and perry.
11. Licence to sell sweets, *i.e.*, British wines, mead, and metheglin.
12. Wholesale *spirit dealer's* additional (retail) licence. The wholesale licence does not authorize the sale of less than two gallons at a time, and this licence is taken out by spirit dealers in order to enable them to sell spirits by "retail" in *not less* quantity than one reputed quart, or to sell foreign liqueurs in bottles as imported.
13. Wholesale *spirit dealer's* additional (retail) licence for foreign liqueurs: quantity as in No. 12.
14. *Wine dealer's* licence (retail). This licence, so far as the *excise* is concerned, is identical with No. 7.

A justices' licence is *not* required when an excise licence is taken out for a spirit dealer's or wine dealer's premises (Nos. 12, 13, 14), if the premises are used exclusively for the sale of drinks (whether intoxicants or not) "and have no internal communication with the premises of any person who is carrying on any other trade or business" (2 Edw. 7, c. 28, s. 10 (i.)).

If a person wishes to take out *more than one* of the above licences simultaneously, it will suffice for him to obtain a single certificate from justices, but it must specify the licences to which it is intended to apply, as well as the place in which the business is to be carried on (37 & 38 Vict. c. 49, s. 23).

Position of
refreshment-
houses.

No licence from *justices* is required to enable a man to keep a restaurant or place of public refreshment, and purvey food and drink, provided that the drink sold is not of an intoxicating character. But a house or room of this description becomes, technically speaking, a "REFRESHMENT-HOUSE," and as such requires a licence from the *excise*, if it is open between the hours of 10 P.M. and 5 A.M. (23 Vict. c. 27, s. 6; 24 & 25 Vict. c. 91, s. 8). A mere shop in which people sit down and are provided with coffee,

cigars, &c., is within the Acts (*Muir v. Keay*) (t), and so, of course, is a "temperance hotel" (*Kelleway v. Macdougall*) (x). Unless it is intended to sell intoxicating liquor, this excise licence (which must be taken out under a PENALTY of 20*l.*) does not require any certificate from justices. But the house must *close* for the night at the same time as ordinary licensed houses (37 & 38 Vict. c. 49, s. 11), and no intoxicating liquor may be *consumed* upon the premises during prohibited hours (35 & 36 Vict. c. 94, s. 27). The holder of a refreshment-house licence may also obtain, *with the consent of justices* (and subject, of course, to the provisions of the Licensing Acts), a retail "on" wine licence (No. 4, *ante*, p. 585), or a retail "off" wine licence (No. 7). But if, with a view to an abatement of duty, he takes out this "on" wine licence (No. 4) under 24 & 25 Vict. c. 91, s. 9, which is conditional upon closing at 10 P.M., there must be neither sale nor consumption upon the premises after that hour (35 & 36 Vict. c. 94, s. 28). See further, *post*, p. 643.

No new licence can become valid and effectual until it has received the *confirmation* of a county or borough confirming authority. Such authority consists of a committee appointed *in counties* by the justices in quarter sessions. *In boroughs* the whole body of justices act as a confirming authority where there are at least ten acting justices; but if there are fewer than ten acting justices a joint committee is established, composed of three of their number and three justices of the county in which the borough is situate. The quorum of such joint committee is five, and the senior magistrate present has a casting vote (35 & 36 Vict. c. 94, s. 38). The application for confirmation is not to be heard until *twenty-one days at least* have expired since the date of the grant of the licence (2 Edw. 7, c. 28, s. 19 (ii.)). The magistrates may refuse the confirmation although there be no opposition to the licence before them; but any person who has *appeared before the licensing justices* may, if so minded, appear to oppose before the confirming authority (35 & 36 Vict. c. 94, s. 43). This authority may, with the consent

Confirmation
of new
licences.

(t) (1875) L. R. 10 Q. B. 599; 44 L. J. M. C. 143; 23 W. R. 700; 40 J. P. 694; 41 J. P. 423.

(x) (1881) 45 J. P. 207.

Confirmation
of new
licences
—*contd.*

of the justices authorized to grant the licence, vary any conditions attached to the grant of an "on" licence (4 Edw. 7, c. 23, s. 4 (vi.)). The authority are not entitled to act on the report of their valuer *not upon oath*, but their certificate may be conditional on the licensing justices accepting a variance of the conditions (*R. v. Jackson*)(y). From the decision of this authority no appeal lies (*Ex parte Lindsay, R. v. Middlesex JJ.*)(z). In a county the quarter sessions, in a borough the borough justices (or the joint committee if there be one), may make rules as to the proceedings to be adopted, but cannot (as, *e.g.*, by regulations as to notices, &c.) abridge the statutory right of an objector to be heard in opposition to the confirmation (*R. v. Bird, Ex parte Needes*)(a). The *confirming* authority may award costs between the parties, and they sit *as a court*, so that *certiorari* will lie to bring up the certificate to be quashed (*R. v. Groom, Ex parte Cobbold*)(b).

Provisional
licence.

In case an "on" licence is sought in respect of buildings which are either yet unbuilt or in process of erection, the applicant must apply for the *provisional* grant and confirmation of a licence in a manner similar to that already indicated. Where, however, a notice is required to be put up on a "door" it may be put up "in a conspicuous position on any part of the premises." Both the licensing and the confirming justices must be satisfied with the plans of the premises, and when the premises have been erected the licensing justices, if content with the result, may declare the provisional grant and confirmation to be *final* (37 & 38 Vict. c. 49, s. 22). As to *renewal*, see *post*, p. 596. The plans, when once approved by the justices, are binding upon the applicant, but the court should not be ingenious to discover slight and immaterial differences between the building and the plans, and the licensing justices must not refuse their final order because such trifling differ-

(y) (1906) 96 L. T. 77; 71 J. P. 25; 23 T. L. R. 128.

(z) (1878) 42 J. P. 469.

(a) [1898] 2 Q. B. 340; 67 L. J. Q. B. 618; 79 L. T. 156; 46 W. R. 528; 62 J. P. 422.

(b) [1901] 2 K. B. 157; 70 L. J. K. B. 636; 84 L. T. 534; 49 W. R. 484; 65 J. P. 452.

ences exist (*R. v. London County Justices*) (c). Nor does it preclude the court from making a *final* order that the confirming authority had confirmed the plans without having had the question of such trifling differences brought before them (*R. v. Pownall*) (d).

An applicant for the grant or renewal of an "ON" licence may, if he be so minded, require the justices to insert a condition that the premises shall be kept closed during the whole of Sunday; or that they shall be closed at night one hour before the regular time. The holder would then be entitled to a remission of one-seventh of the excise duty (35 & 36 Vict. c. 94, s. 49; 37 & 38 Vict. c. 49, s. 7). The "six-day" condition may be inserted on a *transfer*; but it is only at the instance of the *applicant* that these conditions can be inserted in the licence. In Wales licensed houses are closed during the whole of Sunday (44 & 45 Vict. c. 61). As to "six-day" licences, see also *Davies v. Harrison*, *post*, p. 618.

SIX-DAY AND
EARLY
CLOSING
LICENCES.

The *local authority* of any licensing district (*i.e.*, the commissioner of police in the metropolitan police district, the commissioner of city police within the city, and, elsewhere, two justices in petty sessions) may grant an "occasional licence" permitting any house licensed for consumption "on" the premises to be kept open during certain hours, and on any "special occasion" mentioned in the licence, without regard to the regular time of closing (35 & 36 Vict. c. 94, s. 29; 37 & 38 Vict. c. 49, s. 5; and cf. *Groh v. Hesketh*) (e). There is no provision requiring notice of the intended application. A like extension may be granted to the keeper of a "refreshment-house" who holds an excise licence (27 & 28 Vict. c. 64, s. 7). There are, also, special provisions for extending the hours of opening for the accommodation of persons attending markets, &c.: see 35 & 36 Vict. c. 94, s. 26; 37 & 38 Vict. c. 49, s. 4.

OCCASIONAL
LICENCES.

For extension
of hours.

There is, too, a form of occasional licence frequently taken out for cricket matches, races, balls, &c. With the

For selling
elsewhere
than on the

(c) (1889) 24 Q. B. D. 341; 59 L. J. M. C. 71; 62 L. T. 700; 38 W. R. 269; 54 J. P. 213.

(d) (1890) 62 L. J. M. C. 174; 63 L. T. 418; 54 J. P. 438; 6 T. L. R. 282.

(e) Cited *ante*, p. 583.

ordinary
licensed
premises.

consent of a petty sessional court (i.e., of a majority of the justices constituting the court) a licensed person may procure from the *excise* a licence authorizing him to sell liquor at such place and during such time (not exceeding *six* consecutive days when granted to publicans, or *three* days when granted to beer-house and wine-house keepers) as the commissioners of excise approve; and the hours specified must be between *sunrise* and 10 *p.m.*, except, indeed, on the occasion of a public dinner or ball. Twenty-four hours at least before the application is made, a *notice* with particulars must be served on the superintendent of police for the district; but, if there be no sitting of a petty sessional court within three days before the time when the licence is required, and it is shown to the satisfaction of *any two justices*, acting for the division and sitting together, that "it was not practicable to make an application to a petty sessional court," these two justices may give the necessary consent, of which notice must be sent to the superintendent of police. The place in which the sale takes place is to be deemed to be "licensed premises," and the licensed person will be subject to the provisions of the Licensing Acts relating to offences against public order (25 & 26 Vict. c. 22, s. 13; 25 & 26 Vict. c. 33, s. 20; 26 & 27 Vict. c. 33, ss. 19, 24; 27 & 28 Vict. c. 18, s. 5; 37 & 38 Vict. c. 49, ss. 18, 19, 20; 2 Edw. 7, c. 28, s. 17).

It was held that, where a justice who gave his consent to the occasional licence did not in fact usually act for the particular petty sessional division, the holder was not liable for selling without a licence, assuming that he had acted in good faith and that the licence purported on the face of it to be in due form (*Stevens v. Empson*) (f).

Renewal of Licences.

Renewal of
licences.

A licence, being usually granted for a year only, requires to be renewed at each subsequent general annual meeting. A grant of the same character in respect of the same premises is termed a "renewal," although it be made in favour of a new tenant or occupier. When a licensed

(f) (1876) 1 Ex. D. 100; 45 L. J. M. C. 63; 33 L. T. 821; 40 J. P. 484.

person applies for the renewal of his licence, he need not give any previous notice of his intention to apply for a renewal, nor need he attend *in person* unless required to do so by the licensing justices for some cause personal to himself (35 & 36 Vict. c. 94, s. 42; 37 & 38 Vict. c. 49, s. 26). As to what amounts to "cause personal," see *Sharpe v. Wakefield* (g).

Applications for renewals in a *county borough* must be made to the licensing committee; in other boroughs, to the whole body of justices. Every adjournment of the annual meeting must be held within one calendar month of the date of that meeting (2 Edw. 7, c. 28, s. 14). That is to say, the justices cannot, after the expiration of the month, hear or dispose of *new* business or *new* applications which were not before them at the annual meeting or on the statutory adjournment thereof (*R. v. Bristol JJ., Ex parte Whiting*) (h).

Where the application is made by the person already licensed, the justices cannot entertain any objection to the renewal of the licence unless *written notice* stating the grounds of objection has been served on the holder at least *seven* days before the commencement of the general annual licensing meeting (*Ex parte Portingell*) (i); *R. v. Anglessea*) (k). If, however, an objection is started at the hearing of the application for renewal, the justices may *adjourn* the matter to a future day, and require the attendance of the licence-holder; and this is so even if the objector omits to state *in court* the *grounds* of objection (*Daykin v. Parker*) (l). The justices cannot decide then and there, unless, indeed, compliance with the requirements of the section be waived by the applicant. They must see that notice of the objection is duly served on the holder of the licence (*R. v. Merthyr Tydvil JJ.*) (m); *Whigin v. Mallin*) (n). There is nothing to preclude

Objections to
renewal of
licence.

(g) [1891] 1 A. C. 173; 60 L. J. M. C. 73; 64 L. T. 180; 55 J. P. 197; 39 W. R. 561.

(h) (1903) 89 L. T. 474; 67 J. P. 375; 19 T. L. R. 596.

(i) [1892] 1 Q. B. 15; 61 L. J. M. C. 1; 40 W. R. 102.

(k) [1892] 1 Q. B. 850; 61 L. J. M. C. 143.

(l) [1894] 2 Q. B. 556; 63 L. J. M. C. 246; 71 L. T. 378; 42 W. R. 625; 58 J. P. 835.

(m) (1885) 14 Q. B. D. 584; 54 L. J. M. C. 78; 49 J. P. 213.

(n) [1892] 1 Q. B. 362; 61 L. J. M. C. 82; 66 L. T. 333; 56 J. P. 325; 40 W. R. 293.

Notice of
objection to
renewal.

justices from themselves starting an objection and requiring the applicant to attend the adjourned meeting (*R. v. Howard or Farnham JJ.*) (o). It would seem, in such a case, that if a *transfer* be granted before the hearing of the application for renewal, an application by the transferee for renewal cannot be refused if the notice of objection has not been served upon him, but only on the original holder of the licence (*Blencowe v. Staffordshire JJ.*) (p). The justices, in these circumstances, should direct a further adjournment, and give notice to the transferee: for the grant of a *transfer* at special sessions will not preclude the licensing authority from refusing a *renewal*, although the same ground of objection had been urged on the application to transfer (*Smith v. Shann* (q); and cf. *Latimer v. Birmingham*) (r).

Order for
structural
alterations

If the application is for the renewal of an "on" licence, justices may require the deposit of a plan of the premises, and (subject to appeal to the borough or county quarter sessions) may ORDER structural alterations to be made. If the licence-holder makes default in complying with the order, he is liable, on summary conviction, to a PENALTY of 20s. a day; though, if the order is complied with, there can be no similar requisition within five years (2 Edw. 7, c. 28, s. 11). But justices cannot make an order directing the door of a particular entrance to be kept locked (*Smith v. Portsmouth JJ.*) (s); nor can an order under this section be made on an application for a *transfer* (*R. v. Merioneth JJ.*) (ss).

Evidence to
be on oath.

It is, too, to be particularly observed that all evidence with respect to *renewals* of licences must be given *on oath* (35 & 36 Vict. c. 94, s. 42 (iii.)). As to APPEAL against a refusal to renew, see *ante*, p. 156.

The renewed licence does not require confirmation by either the county or the borough confirming authority.

Refusal to
renew "ON"

In the case of an "on" licence for the sale of wine

(o) [1902] 2 K. B. 363; 71 L. J. K. B. 754; 86 L. T. 839; 51 W. R. 21; 66 J. P. 579.

(p) (1907) 96 L. T. 817; 71 J. P. 210.

(q) [1898] 2 Q. B. 347; 67 L. J. Q. B. 819; 79 L. T. 77; 62 J. P. 354.

(r) (1896) 60 J. P. 660.

(s) [1906] 2 K. B. 229; 75 L. J. K. B. 851; 95 L. T. 5; 70 J. P. 497.

(ss) (1908) 99 L. T. 89; 72 J. P. 389.

alone or sweets alone, justices have an absolute discretion to grant or refuse the renewal. With this exception, and excluding from consideration "*ante-1869*" beer-houses, the renewal of an "on" licence *existing on August 15th, 1904*, cannot be refused WITHOUT COMPENSATION save on one or other of the following grounds (which must be specified in writing to the applicant) :—

licence WITH-
OUT COMPEN-
SATION.

(i.) That the licensed premises have been ill-conducted.

(ii.) That they are structurally deficient or structurally unsuitable.

(iii.) On grounds connected with the character or fitness of the proposed holder of the licence.

(iv.) That the renewal would be void.

In the case of an "on" licence granted *after August, 1904*, justices have an absolute discretion (subject, of course, to the right of appeal to *county sessions*); but such discretion must be exercised fairly and judicially, according to law, and not in an arbitrary, vague, or fanciful manner.

If the application is for the renewal of a licence to sell wine, cider, spirits, liqueurs, or sweets "off" the premises (provided that the *applicant* held such licence on JUNE 25TH, 1902); or if it is for the renewal of a licence to sell beer, cider, or wine "on" the premises, where the *licence* has been held, by the applicant or some other tenant, since MAY 1ST, 1869, without intermission, the discretion of the justices is specially limited. In these cases they can only refuse to renew the "off" licence, or to renew the beer-house licence (WITHOUT COMPENSATION), on one or more of the four grounds following, viz. :—

Renewals of
certain "off"
licences prior
to 1902; and
of beer-house
licences prior
to 1869 (with-
out compensa-
tion).

(1) That the evidence of character is not satisfactory;

(2) That the house or adjacent premises is or are disorderly (cf. *R. v. Miskin (t)*), as to proof of convictions against *previous* tenants being admissible to show that the house is of a "disorderly character");

(3) That a previous licence has been forfeited through the misconduct of the applicant, or that he has been adjudged disqualified from receiving a licence;

(4) That the applicant or the house is not duly qualified; *i.e.*, where any qualification is required.

(t) [1893] 1 Q. B. 275; 67 L. T. 680; 57 J. P. 263.

Renewal of
certain "off"
licences.
Renewal
(without
compensation)
of ante-1869
beer-houses.

If, however, in the case of such an "OFF" licence, should appear that the licensee had (a) sold *surreptitiously* under the licence, or (β) assisted in concealing or *misrepresenting* the nature of the goods sold, or (γ) in any other way, in the opinion of the justices, been guilty of misconduct in the management of his business, the renewal may be refused.

The grounds of refusal must be distinctly stated by the justices, *in writing*, even though they may not be asked to make the announcement. We have already seen (*ante*, p. 582) that under the Act of 1902 material alterations of the premises cannot be made without the consent of the licensing justices; while, if such alterations were effected that the premises were not substantially the same premises, the justices might, independently of the Act of 1902, refuse the renewal (*R. v. Sheffield J.J.*) (*u*).

But, if the licence of an ante-1869 beer-house be kept alive, the privilege of renewal (as distinguished from transfer) attaches, although no beer may have been sold for a long time and the needs of the neighbourhood would not justify the grant of a new licence (*Mackrell v. Brentford J.J.*) (*v*).

Renewals of
other "OFF"
licences.

As to all other "off" licences (*i.e.*, "off" licences except those to sell wine, cider, spirits, liqueurs, or sweets held by the same licensees as held them in June, 1902), justices have an absolute discretion to refuse the renewal.

Refusal to
renew coupled
with PAY-
MENT OF
COMPENSA-
TION.

No question of "compensation" can arise with regard to any "off" licence; nor in the case of an "on" licence for wine alone or sweets alone; nor in respect of an "on" licence granted after August, 1904. We have already seen on what grounds the renewal of other "on" licences, and of certain "off" licences held by the applicants prior to June, 1902, may be refused *without compensation*. If, however, justices seek to destroy one of the "ON" licences last referred to (*i.e.*, "on" licences prior to 1904) on some other ground, their purpose can only be effected under the compensation clauses of the Act of 1904 (4 Edw. 7, c. 23, ss. 1—3).

(*u*) (1899) 63 J. P. 595.

(*v*) [1900] 2 Q. B. 387; 69 L. J. Q. B. 748; 83 L. T. 31; 48 W. R. 648; 64 J. P. 663.

In a county, the power to refuse renewal under these clauses is vested in "quarter sessions" instead of the justices of the licensing district; and, in a county borough, the power is exercised by the "whole body of justices," *i.e.*, by a majority of the justices present at the meeting. In a county, "quarter sessions" must delegate the power to a committee, on which sit additional members appointed by the non-county boroughs. Where the "renewal authority" (p. 591) are of opinion that the question of the renewal of any particular "on" licence, existing prior to 1904, requires consideration on grounds other than those on which the renewal can be refused without compensation, the matter is referred, together with a report, to this "compensation authority," *i.e.*, to the committee appointed by quarter sessions in a county, or to the whole body of justices in a county borough. Meanwhile, there is a provisional renewal of the licence (Licensing Rules, 1904, r. 41). The report is then considered by the "compensation authority," who exercise an *original* jurisdiction, and may, if they think it expedient, after hearing the persons interested *in the premises* (and, unless they think it unnecessary, any other persons interested in the question, including the "renewal" authority), refuse the renewal SUBJECT TO THE PAYMENT OF COMPENSATION.

The amount of compensation will be a sum equal to the difference between the value of premises (calculated as if the licence were subject to the conditions of renewal applicable in 1904 and including the amount of depreciation of trade fixtures arising from the refusal to renew) and the value of the premises if unlicensed. If the amount is not agreed and approved by the "compensation authority," it will be determined by the Commissioners of Inland Revenue.

Assessment of
compensation.

The procedure is regulated by the Rules to the Licensing Act, 1904; and see *Howe v. Newington JJ.* (x); *R. v. Ryder* (y). Any question arising as to the division of the amount of compensation amongst the various parties interested may be referred to the county court. In so far as the licence-holder is concerned, regard must

(x) [1908] 1 K. B. 260; 77 L. J. K. B. 263; 98 L. T. 79; 72 J. P. 12; 24 T. L. R. 174.

(y) [1907] A. C. 420; 76 L. J. K. B. 1032; 71 J. P. 484.

be had not only to his legal interest in the premises or trade fixtures, but also to his conduct and the time he has held the licence, while, in no case, is he to receive a less amount than he would be entitled to as tenant from year to year.

Renewal of
provisional
licence.

If the holder of a *provisional* licence finds that the premises are not completed within the year, he may apply for a renewal in the ordinary way, and, if this be refused, he may appeal against the refusal to quarter sessions (*R. v. London County JJ.*) (z). A licence for "seven" years only becomes operative when the grant is declared "final" (*R. v. Johnstone, Ex parte Cobbold*) (a); cf. *ante*, p. 588.

Six-day
licence.

But if the licence held is a "six-day" licence, the justices cannot afterwards be required to *renew* it as an ordinary seven-day licence, although the applicant caused the six-day condition to be inserted at his own instance (*ante*, p. 589) (*R. v. Crewkerne*) (b).

Application
by new tenant
after refusal
of renewal.

Where the renewal of the licence of a beer-house was refused at the annual licensing meeting, and a new tenant came into occupation of the premises prior to the adjourned meeting, such new tenant was held to be entitled to apply for a renewal, although he was not the licensed person (*Symons v. Wedmore*) (c).

Transfer of Licences.

Transfer of
licences.

We have already seen (p. 14) that *special sessions* are convened from four to eight times during the year for the purpose of carrying out the TRANSFER of licences in case of a *change of occupancy* during the interval between two general annual licensing meetings. Certain contingencies are, also, specially provided for by statute:—The *death* of the licence-holder, his *incapacity* from sickness, his *bankruptcy*, his *removal* from the premises, his *omission* to apply for a renewal of the licence, the *pulling down* for public purposes, or the *inevitable destruction* of the

9 Geo. 4, c. 61.
s. 14.
2 Edw. 7,
c. 28. Sched.

(z) *Ante*, p. 589.

(a) [1906] 1 K. B. 228; 75 L. J. K. B. 229; 94 L. T. 377; 54 W. R. 347; 70 J. P. 118; 22 T. L. R. 226.

(b) (1888) 21 Q. B. D. 85; 57 L. J. M. C. 127; 60 L. T. 84; 52 J. P. 372; 36 W. R. 629.

(c) [1894] 1 Q. B. 401; 63 L. J. M. C. 44; 69 L. T. 801; 58 J. P. 197; 42 W. R. 301.

premises. In the event of the happening of any of these contingencies, it may become necessary for an application to be made for a grant in the nature of a transfer of the licence, or that the licence may be so varied as to cover premises other than those originally licensed. If granted, the licence will continue in force until the 5th April then next ensuing. Section 14 of the Act of 1828 provides "for the transfer of a licence to the *same* person in respect of *different* premises, and for the transfer to a *different* person in respect of the *same* premises" (per *Mathew, J.*, in *R. v. W. R. of Yorks* (*d*); and see *Davies v. Evans* (*e*).

Transfer of
licences.

The transfer can be effected only at one of the special sessions above referred to, and after service of the fourteen days' notice (addressed to an overseer and the superintendent of police) required by s. 40 (ii.) of the Act of 1872 (2 Edw. 7, c. 28, s. 16 (iii.)); while, if the proposed transfer is from one house to another, notices must also be affixed on the new premises and on the church door (or, where there is no church, in some other conspicuous place) at the time and in manner prescribed by s. 14 of the Alehouse Act, 1828 (9 Geo. 4, c. 61).

In a county borough, the *licensing committee* will deal with the transfer of "on" licences existing in 1904, other than "on" licences for wine alone or sweets alone (4 Edw. 7, c. 23, s. 9 (i.), (iv.)). Unless the licensing justices for good cause shown dispense with their attendance, both the person holding the licence and the proposed transferee must attend at the special sessions, and "for the purpose of compelling the attendance of any such person, or any witness, the licensing justices shall have all the powers of a court of summary jurisdiction" (2 Edw. 7, c. 28, s. 16 (i.)). The agreement under which the licence is to be transferred and held must, too, be produced. At the annual meeting regulations may be made limiting the time that must elapse between successive applications in respect of the same premises (*ib.* s. 16 (ii.)). It is not necessary that the evidence should be taken on oath; or that notice of opposition should be given. As to APPEAL against a refusal to transfer, see *ante*, p. 156. And as to the temporary continuance, until the transfer sessions, of

(*d*) [1898] 1 Q. B. 503; 67 L. J. Q. B. 279; 78 L. T. 47; 62 J. P. 198.
(*e*) (1898) 77 L. T. 688; 62 J. P. 120.

Discretion as
to transfer.

licences forfeited for single offences, see s. 15 of the Act of 1874 (*post*, p. 600) and s. 11 of the Act of 1902 (*ante*, p. 583). Where a licence has been granted for a "term not exceeding seven years," a transfer may be granted at the annual meeting as well as at special sessions (4 Edw. 7, c. 23, s. 4 (iii.)). The discretion of the justices as to the grant of transfers from one person to another is, speaking generally, limited in the same way as in the case of renewals (*Simmonds v. Blackheath JJ.*) (*f*). Subject to the right of appeal, this discretion, in relation to ordinary "on" licences granted since 1904, "on" licences for wine alone or sweets alone, and all "off" licences, is, therefore, absolute. Its exercise in the excepted cases is discussed on pp. 593–595. The exception of certain "off" licences held by the *same* licensees as in 1902 is, of course, confined to applications by way of *renewal*, as distinguished from *transfer*. If the case is one which can only be dealt with on payment of compensation, the matter must be referred to the "compensation authority," on a report transmitted at the close of the next annual meeting (4 Edw. 7, c. 23, ss. 1, 9). Meanwhile, the justices must issue a provisional transfer (Licensing Rules, 1904, No. 44). If, however, a beer-house is about to be *pulled down* for a public purpose, the justices are not limited to the four grounds, even although the premises were licensed before May, 1869, inasmuch as the privilege attaches to the premises and not to the person (*Traynor v. Jones*) (*g*). Nor are they so limited on an application by a new tenant of a beer-house licensed before May, 1869, made after a refusal to renew the licence of the former tenant, *i.e.*, where the current licence has expired before the application (*Murray v. Freer*) (*h*).

Where a new tenant applied for a transfer, and was refused, and afterwards applied for a new licence, and was refused, this was held to be no bar to another person, who afterwards entered into possession of the premises,

(*f*) (1886) 17 Q. B. D. 765; 55 L. J. M. C. 166; 35 W. R. 167; 50 J. P. 742.

(*g*) [1894] 1 Q. B. 83; 63 L. J. M. C. 31; 69 L. T. 862; 42 W. R. 201; 58 J. P. 182.

(*h*) [1894] A. C. 576; 63 L. J. M. C. 242; 71 L. T. 444; 58 J. P. 508.

applying for a licence under 9 Geo. 4, c. 61, s. 14 (*R. v. Upper Osgoldcross*) (*i*).

Temporary Authority.

In cases where a *change of occupancy* occurs in the interval between two of the special sessions for transfers, the majority of justices present in petty sessions (or in London a police magistrate) are empowered, after examining upon oath all necessary parties, to authorize a TEMPORARY TRANSFER from one person to another. This is generally called granting "protection," the result being to give the applicant protection in carrying on the business until the next special session, when the application for a transfer must be heard and decided in the regular way (5 & 6 Vict. c. 44). A clear week's notice, with the necessary particulars, is required to be served on the superintendent of police, unless, in case of urgency, a "reasonable" notice be accepted by the court as sufficient (2 Edw. 7, c. 28, s. 15). The holder of this temporary authority is not, properly speaking, a "licensed person," so that, if he applied at the annual meeting for the licence, he would not be a "licensed person applying for the renewal of his licence." He would not, therefore, be entitled to receive any notice of opposition (*Price v. James*) (*k*); nor does the grant operate to cancel the existing licence, so that, so long as the licence-holder remains in possession, he cannot be convicted for selling liquor without a licence (*Andrews v. Denton*) (*l*). But the new tenant must be careful not to sell on his own account before protection has been obtained. There is no appeal to quarter sessions if the court refuse to grant this temporary authority. It may be added that, if the licence-holder dies or becomes bankrupt, his representatives are protected, and may carry on the business until application can be made at special sessions for a transfer (35 & 36 Vict. c. 94, s. 3; and cf. *post*, p. 611). Again, if a licensed person is convicted *for the first time* of any felony or of any one of certain specified offences disqualifying him from

Temporary authority.

In case of death or bankruptcy.

Where licence is forfeited on conviction, or licensee disqualified.

(*i*) (1889) 62 L. T. 112; 53 J. P. 823.

(*k*) [1892] 2 Q. B. 428; 61 L. J. M. C. 203; 67 L. T. 543; 41 W. R. 57; 57 J. P. 148.

(*l*) [1897] 2 Q. B. 37; 66 L. J. Q. B. 520; 76 L. T. 423; 45 W. R. 500; 61 J. P. 326.

holding a licence, or entailing its forfeiture (*i.e.*, selling spirits without licence, forging a certificate under the Wine, &c., Acts, and offence (u), *post*, p. 640), the *owner* or his tenant may apply for such a temporary authority as we have described above, enabling the business to be carried on until a transfer can be obtained. The application for the *transfer* must be made at the *next* special sessions (37 & 38 Vict. c. 49, s. 15; *Sterens v. Sharnbrook*) (*m*). This section applies when the disqualification first arises by reason of conviction, although it may be on a *second* conviction, as, *e.g.*, on a second conviction for offence (e) *post*, p. 611 (*Ex parte Flinn and Sons*) (*n*). Where the tenant of an *ante*-1869 beer-house sold spirits without a licence and thereby forfeited his excise licence, it was held that the forfeiture put an end to the justices' licence, so that the court were not limited to the "four grounds" on refusing an application for the temporary authority (*Tower JJ. v. Chambers*) (*o*). See, too, *ante*, p. 583.

Removal of Licences.

Removal of
licences.

Licences may, under certain circumstances, be removed from one part to another of the same licensing district, or to another licensing district in the same county. An application for an order authorizing such removal—as for a new licence—must be made at the annual licensing meeting for the district to which the licence is to be removed, and two additional copies of the notice must be served, the one on the owner of the premises and the other on the licence-holder unless he be the applicant. It is essential that no objection should be raised by either of these persons or by any other person who, in the opinion of the justices, has a right to object. The consent of the justices is by no means a matter of course, and the order made by them is subject to approval by the confirming authority of the licensing district (*ante*, p. 587; 35 & 36 Vict. c. 94, s. 50). The justices cannot, however, impose conditions such as they

(*m*) (1889) 23 Q. B. D. 143; 58 L. J. M. C. 167; 61 L. T. 240; 53 J. P. 423.

(*n*) [1899] 2 Q. B. 154; 68 L. J. Q. B. 777; 81 L. T. 27; 47 W. R. 697; 63 J. P. 660; 15 T. L. R. 406.

(*o*) [1904] 2 K. B. 903; 73 L. J. K. B. 951; 91 L. T. 643; 68 J. P. 581.

are empowered to impose in the case of the grant of a new "on" licence (*R. v. Drinkwater*) (*p*). If the necessity for the removal is brought about by the house being about to be pulled down for any public purpose, then, as we have seen (*p*. 596), such an application may be made, under s. 14 of 9 Geo. 4, c. 61, at the sessions for transfer.

Registration of Clubs.

Where premises are habitually used for the purposes of a club and *intoxicating liquor* is supplied to members or their guests, the officer performing the duties of *secretary* (or, in the case of a proprietary club where there is no secretary, the proprietor) must some time during January in each year furnish to the justices' clerk of the petty sessional division or to the clerk of a metropolitan police court, (with a fee of 5*s.*), a RETURN showing (α) the name and objects of the club; (β) the address thereof; (γ) the secretary's name; (δ) the number of members; and (ε) the rules relating to election of members, admission of temporary and honorary members and guests, fees, cessation of membership, hours of opening and closing, and mode of altering rules. The return must be signed and contain a statement that a list of members and a record of the latest payment of subscriptions are kept on the premises. If a new club is about to be opened, a similar return must be furnished before the opening (2 Edw. 7, c. 28, ss. 24, 25).

Registration
of clubs.

These returns are entered by the justices' clerk in a REGISTER, open at all reasonable hours to the inspection of an inspector or superintendent of police or an Inland Revenue officer without fee, and of any person on payment of 1*s.* (*ib.*).

An omission to make a return renders the *secretary* liable to a PENALTY of 20*l.* (or to peremptory IMPRISONMENT for a *second* offence); while, if he knowingly makes a return which is *false* in any material particular, he is liable to IMPRISONMENT, with hard labour, for THREE MONTHS, or to a FINE of 50*l.*, or both (*s.* 30).

Penalty for
false returns,
&c.

Registration does not authorize any sale of liquor which would otherwise be illegal (see *post*, *p.* 612), and it may be vacated by ORDER of a *court of summary jurisdiction*, made on complaint in writing by any person,

Striking off
register.

(*p*) [1905] 2 K. B. 469; 74 L. J. K. B. 722; 93 L. T. 165; 69 J. P. 300.

Striking club off register. the summons to be served on the secretary and such other person, if any, as the "court" may direct (*ib.*, s. 28). The grounds on which a club may be struck off the register are that (i.) it has ceased to exist or its members number less than twenty-five; (ii.) it is not conducted in good faith as a club (having regard to the nature of the premises occupied), or is kept or habitually used for any unlawful purpose; (iii.) there is frequent drunkenness on the premises; (iv.) illegal sales of liquor have taken place; (v.) non-members are habitually admitted merely to obtain liquor; (vi.) a licence has been forfeited, or (cf. *Plaistow Working Men's Club v. Harrod*, 11 Jan., 1910 (K. B. D.)) its renewal refused in respect of the club premises *within twelve months* preceding the formation, or an order has been made that the premises shall not be used as a club; (vii.) members are habitually admitted without forty-eight hours' interval between nomination and admission; or (viii.) supply of liquor is not under the control of the members and the committee appointed by them (*ib.*). The court may include in the order a direction (subject to subsequent cancellation or variation) that the premises be *not occupied for the purposes of any club which requires registration for a period not exceeding twelve months*, or, in case of a second or subsequent order, five years (*ib.*).

Supplying or selling liquor in an "un-registered" club.

Every person supplying or selling (or authorizing the supply or sale of) intoxicating liquor to a member or guest on the premises of a club, which requires registration but is not in fact on the register, commits an OFFENCE (s. 26 (i.)).

PENALTY.—FINE not exceeding 50*l.*, and, in default of distress, imprisonment *without* hard labour according to scale (p. 111); OR IMPRISONMENT, with or without hard labour, for ONE MONTH, or to *both* fine and imprisonment.

Keeping liquor in "un-registered" club.

If *intoxicating liquor is kept for supply or sale* on the premises of a club, which requires registration but is not in fact registered, an OFFENCE is committed, and every officer or member is liable unless he *proves* to the satisfaction of the court that the liquor was so kept without his knowledge or "against his consent" (*sic*) (s. 26).

PENALTY.—FINE not exceeding 5*l.*, recoverable by distress, and, in default, imprisonment without hard labour, according to scale (p. 111).

Supplying liquor in any

If *any person* supplies intoxicating liquor in a club *for consumption off the premises*, except to a member on the

premises, he and the person obtaining the liquor each commits an OFFENCE (s. 27).

PENALTY.—*Fine* not exceeding 10*l.*, recoverable as above.

If a justice is satisfied by information on oath that a club is so carried on as to constitute a ground for striking it off the register, or that intoxicating liquor is improperly kept or supplied in an unregistered club, he may issue a search warrant authorizing a constable to make forcible entry, inspect the premises, take the names and addresses of persons found thereon, and seize books and papers relating to the business of the club (s. 29).

club for consumption off the premises, except to member.

Search warrant.

OFFENCES.

A justice may not act in a matter affecting licensed premises in which he is *beneficially* interested, or in respect of which he is the manager or agent for the owner, lessee, or occupier. Subject to this restriction, a magistrate, although engaged in the liquor traffic, may dispose of charges of *drunkenness* under s. 12 of the Licensing Act, 1872, or under s. 2 of the Act of 1902; *i.e.*, offences (a), (b), (c), (d), and (e), *post*, pp. 605—607. But, as to all other offences or matters *under the Licensing Acts*, a justice is precluded from acting if he is “in partnership with or holds any share in any company which is a common brewer, distiller, maker of malt for sale, or retailer of malt or of any intoxicating liquor in the licensing district, or in the district or districts adjoining to that in which such justice usually acts” (35 & 36 Vict. c. 94, s. 60). A justice acting in contravention of this section would be obnoxious to a penalty of 100*l.*, recoverable by action; but his acts would not be invalid by reason only of the fact of his disqualification, *i.e.*, if he did not manifest actual bias. The old Beer-house Acts are not included in this disqualification, but the Wine and Beer-house Acts of 1869 and 1870 are included; and a justice coming within the above description should not act in the matter of granting temporary authorities under 5 & 6 Vict. c. 44 (*ante*, p. 599).

Disqualification of justices.

It is, however, provided that a justice shall not be disqualified to act for any purpose under the Licensing Acts, 1828 to 1886, or the Licensing Act of 1902, by reason only of his being interested in a *railway company*

which is a retailer of intoxicating liquor (2 Edw. 7, c. 28, s. 12). And this will apply also to the Licensing Act of 1904 (4 Edw. 7, c. 23, s. 10 (i)).

A justice within the disqualification sections of the Acts cannot even vote in the election of a licensing committee for the district (*A.-G. v. Willett*) (q). See, too, *A.-G. v. Ball* (r).

Proof of sale
or consump-
tion of liquor.

If the court is satisfied that a transaction in the nature of a sale of intoxicating liquor actually took place, or that consumption of such liquor was about to take place, it is not necessary to show (in order to prove a sale or consumption) that money actually passed, or that liquor was actually consumed. Moreover, proof of consumption, or intended consumption, of intoxicating liquor on licensed premises by some person other than the occupier or his servant is evidence of a sale by the holder of the licence to the person consuming, or being about to consume or carry away, the liquor (35 & 36 Vict. c. 94, s. 62).

Penalties.

When a LICENSED PERSON is convicted of any offence against the Licensing Acts, or any Acts mentioned therein, the penalty cannot, *except in the case of a first offence*, be reduced to less than 20s. (37 & 38 Vict. c. 49, s. 12). As to the application of penalties to the police pension fund see the Police Act, 1890 (53 & 54 Vict. c. 45, s. 16).

Appeal.

There is in every case an APPEAL to quarter sessions against a conviction or order (35 & 36 Vict. c. 94, s. 52).

Register of
licences, con-
victions, &c.

In every licensing district a register is kept by the clerk of the licensing justices, giving particulars of all licences granted within the area, as regards the premises, their owners, and the holders for the time being of the licences. In addition to a record of all forfeitures and disqualifications, there must appear, in the prescribed form, notice of every conviction of a licensed person for an offence committed by him *as such*. If the clerk of the court is not the clerk of the licensing justices, he must forthwith send notice of the conviction to the latter (35 & 36 Vict. c. 94, s. 36; 2 Edw. 7, c. 28, s. 9).

The clerk of the licensing justices must, too, serve notice of any conviction relating to the licensed premises on the owner thereof; and this notice must be served personally or sent by registered letter (35 & 36 Vict. c. 94, s. 70).

(q) 60 J. P. 643.

(r) (1902) 66 J. P. 553.

Any person possessing an interest in the premises paramount to that of the occupier is entitled to be placed upon the register as an owner, or one of the owners, for the purpose of the licensing laws; and such person may apply to a court of summary jurisdiction to make an order substituting his name in place of that of another person appearing on the register and licence.

Register of
licences, con-
victions, &c.
—*contd.*

The clerk is required (under penalties) to allow inspection, &c., of the register to ratepayers, or persons interested in the premises (upon payment of a fee of 1s.), and to officers of police and inland revenue (see 35 & 36 Vict. c. 94, s. 36).

On an application for grant, renewal, or transfer, the justices will have regard to all relevant entries in the register; but, after five years, a conviction will not be receivable in evidence for the purpose of subjecting any person "to an increased penalty or to any forfeiture" (*ib.*, s. 32).

If the licences of *two* persons (who had no licence in 1872 in respect of the same premises) are *forfeited* within two years, the premises will be disqualified for one year (*ib.*, s. 31).

Drunkenness.

- (a) Every person *found drunk* in any *highway*, or other *public place*, whether a building or not, or on any *licensed premises*, commits an OFFENCE (35 & 36 Vict. c. 94, s. 12). "Licensed premises" are defined by s. 74 of the Act; and, for the purposes of this section, include premises with an *occasional* licence (37 & 38 Vict. c. 49, s. 20).

Found drunk.
Form of
Information.
post, p. 1223.

It will be observed that the defendant must be "found" drunk in one of the places specified. The words "public place" include any place to which the public have access, whether on payment or otherwise (2 Edw. 7, c. 28, s. 8). If the person so "found drunk" appears to be "incapable of taking care of himself" he may be apprehended and "dealt with according to law" (*ib.*, s. 1). As to his release from custody, see *ante*, p. 51. A publican found drunk on his own premises, *after they are closed*, when all the customers are gone and the premises are not being used as a public-house, cannot be convicted of this offence (*cf. Lester v.*

Torrens (s). So far as the publican is concerned, the premises seem, in these circumstances, to be properly regarded as his "private house"; but where a customer (who was not a lodger or innate) remained after closing time and was found drunk on the premises, which he was still using as "licensed premises," he was held to have been rightly convicted (*R. v. Pelly*) (t). See, too, offence (h), *post*, p. 623, and see *post*, p. 898.

Penalty.

PENALTY.—*First offence*, not exceeding 10s. ;

Second offence (within twelve months), not exceeding 20s. ;

Third offence (within twelve months), not exceeding 40s.

The penalty is recoverable by *distress*, and, in default, imprisonment, with or without hard labour, according to scale (*ante*, p. 111).

In addition to or in substitution for any other penalty, the court may order the defendant to *enter into a recognizance*, with or without sureties, *to be of good behaviour* (cf. *post*, p. 898).

One justice may convict, but cannot inflict a penalty exceeding 20s. (*ante*, p. 12).

Drunk and disorderly.

Form of Information,
post, p. 1223.

(b) Every person who, in any *highway*, or other *public place*, whether a building or not, is guilty, while drunk, of *riotous or disorderly* behaviour, commits an offence (35 & 36 Vict. c. 94, s. 12). The words "public place" include any place to which the public have access, whether on payment or otherwise (2 Edw. 7, c. 28, s. 8).

A person charged with this offence cannot, it seems, be convicted of being simply "drunk," or *vice versa*, the offences being distinct. If necessary, a fresh charge should be preferred, and the hearing adjourned, unless the defendant is willing for the matter to be disposed of at once (cf. *ante*, p. 70, 86; and *Martin v. Pridgeon*) (u). The offender may be apprehended by any person upon the spot.

Penalty.

PENALTY.—FINE, not exceeding 2l., and, in default of *distress*, imprisonment, with or without hard labour, according to scale (p. 111); or,

IMPRISONMENT, with or without hard labour, for a term not exceeding ONE MONTH.

(s) (1877) 2 Q. B. D. 403; 46 L. J. M. C. 280; 25 W. R. 691; 41 J. P. 821.

(t) [1897] 2 Q. B. 33; 66 L. J. Q. B. 519; 76 L. T. 467; 45 W. R. 504; 61 J. P. 373.

(u) (1859) 28 L. J. M. C. 179; 1 E. & E. 778; 23 J. P. 630.

In addition to or in substitution for any other penalty, the court may order the defendant to *enter into a recognizance*, with or without sureties, *to be of good behaviour* (cf. *post*, p. 898).

- (c) Every person who, in any *highway* or other *public place*, is drunk while *in charge* of any carriage, horse, cattle (probably including sheep, pigs, &c.), or steam-engine, commits an OFFENCE (35 & 36 Vict. c. 94, s. 12). The words “public place” include any place to which the public have access, whether on payment or otherwise (2 Edw. 7, c. 28, s. 8).

Drunk in charge of a horse, &c.
Form of Information,
post, p. 1223.

The offender may be apprehended by any person.

PENALTY.—FINE, not exceeding 2*l.*, and, in default of *distress*, imprisonment, with or without hard labour, according to scale (p. 111); *or*,

Penalty.

IMPRISONMENT, with or without hard labour, for a term not exceeding ONE MONTH.

In addition to or in substitution for any other penalty, the court may order the defendant to *enter into a recognizance*, with or without sureties, *to be of good behaviour* (cf. *post*, p. 898).

- (d) Every person who is drunk when in possession of any *loaded firearms* commits an OFFENCE (35 & 36 Vict. c. 94, s. 12).

Drunk in possession of loaded firearms.

The offender may be apprehended by any person.

PENALTY.—FINE, not exceeding 2*l.*, and, in default of *distress*, imprisonment, with or without hard labour, according to scale (p. 111); *or*,

Penalty.

IMPRISONMENT, with or without hard labour, for a term not exceeding ONE MONTH.

In addition to or in substitution for any other penalty, the court may order the defendant to *enter into a recognizance*, with or without sureties, *to be of good behaviour* (cf. *post*, p. 898).

- (e) Every person who is found drunk in a *highway*, or other public place, whether a building or not (including any place to which the public have access on or without payment), or on *licensed premises*, if in charge of a child *under seven years* of age, is guilty of an OFFENCE (2 Edw. 7, c. 28, s. 2). If the child appears to be under the prescribed age, the offender may be apprehended, and the child will be deemed under age until the contrary is proved.

Drunk while in charge of a child.
Form of Information,
post, p. 1223.

Drunk in
charge of a
child.

Inebriates
Acts, 1898,
1899.

Detention of
habitual
drunkard
after three
convictions
within 12
months of
commission
of *fourth*
offence.

PENALTY.—FINE or IMPRISONMENT as in (d). But any imprisonment imposed in default of distress must be *without hard labour*. In addition to or in substitution for the penalty, a recognizance may be required, as in (d).

Special provision is made for the detention in CERTIFIED INEBRIATE REFORMATORIES of persons *repeatedly* convicted of *drunkenness*. The OFFENCES dealt with are (a), (b), (c), (d), and (e), above described; an offence similar to (b) under the Town Police Clauses Act (*post*, p. 774), or under the Metropolitan Police Act (2 & 3 Vict. c. 47, s. 58); refusing when drunk to quit premises licensed under the Licensing Acts (*post*, p. 634), or under the Refreshment Houses Act (*post*, p. 644); refusing when drunk to quit a passenger steamer (57 & 58 Vict. c. 60, s. 287); and drunkenness when in charge of a hackney carriage (10 & 11 Vict. c. 89, s. 61; 6 & 7 Vict. c. 86, s. 28).

A person who commits any of these offences is liable to be detained for a term not exceeding THREE YEARS in a reformatory (of which the managers are willing to receive him), if—

(a) he has *within* TWELVE MONTHS *preceding the date of its commission* been convicted *at least* THREE times of any of these offences; AND

(β) he is a HABITUAL drunkard.

By an Act of 1879 “habitual drunkard” is defined to mean: “A person who, not being amenable to any jurisdiction in lunacy, is notwithstanding, by reason of *habitual intemperate drinking* of intoxicating liquor, at times dangerous to himself or herself, or to others, or incapable of managing himself or herself, *and* his or her affairs” (12 & 13 Vict. c. 19, s. 3). See further *ante*, p. 546.

The Act of 1898 provides that the defendant shall be liable to be so detained “upon conviction *on indictment*, OR, if he consents to be dealt with summarily, *on summary conviction*”; and that the Summary Jurisdiction Act, 1879, shall apply as though “the offence charged were specified in the second column of the First Schedule of the said Act” (*post*, p. 1056). The offender may, therefore, be committed for trial, OR, *with his own consent*, may be dealt with summarily after adopting the procedure as to giving the option of summary trial set forth at p. 137 (61 & 62 Vict. c. 60, s. 2).

The accused must not be sentenced to any punishment

for the offence beyond the detention in the reformatory (cf. *R. v. Briggs* (w)).

As to the proof of the previous convictions, see *ante*, pp. 29, 106, 136.

On indictment the costs are payable as in cases of felony (so that bail is *discretionary*); while on summary trial costs may be dealt with, as in cases of indictable offences tried summarily (*ante*, p. 139; 62 & 63 Vict. c. 35, s. 1). By the Act last cited, breaches of *regulations* under the Act of 1898 are made triable *summarily* (*ib.*, s. 2).

If satisfied that an *order of detention* could be made (then whether it be made or not) the court must ORDER that *notice* of the defendant's conviction as a "habitual drunkard" under the Acts be sent to the *police authority* (within the meaning of the Police Act, 1890) for the police area in which the court is situate, with such particulars as may be prescribed (2 Edw. 7, c. 28, s. 6 (i)). Justices cannot, of course, make any such order unless the accused consents to be dealt with summarily (*Police Commissioner v. Donovan*) (x). The court must "inform" the convicted person that notice is to be sent (*ib.* s. 6 (ii)). As to the meaning of "police authority," see 53 & 54 Vict. c. 45, Sched. 3; and as to the prescribed "particulars," see 6 Stat. Rules and Orders (1902), No. 831, and 66 J. P. 778.

Sale to persons declared to be "habitual drunkards." "*Black List*."

Penalties.

If, *within three years*, the *convicted person* purchases or obtains, or attempts to purchase or obtain, any intoxicating liquor at premises licensed for sale "on or off," or at a registered club, he commits an OFFENCE, punishable by fine of 20s. for a first offence, and 40s. for a subsequent offence. The penalty is recoverable by distress, and, in default, imprisonment, *without* hard labour, according to scale (p. 111) (2 Edw. 7, c. 28, s. 6 (ii.) (a)). If, *within the three years*, a *licence-holder*, or a person selling, supplying, or distributing intoxicating liquor on the premises of a *registered club* (or authorizing such sale, &c.), *knowingly* sells, supplies, or distributes (or allows any person to sell, supply, or distribute) intoxicating liquor to, or for the consumption of, the convicted person, an OFFENCE is committed (s. 6 (ii.) (b)). The PENALTY for a first offence

(w) [1909] 1 K. B. 381; 78 L. J. K. B. 116; 100 L. T. 240; 53 S. J. 164; 73 J. P. 31; 25 T. L. R. 105.

(x) [1903] 1 K. B. 895; 72 L. J. K. B. 545; 67 J. P. 147.

is 10*l.*; and for a subsequent offence in respect of the same person, 20*l.*

Convictions
on indict-
ment.

As to convictions *on indictment for any offence* punishable with *imprisonment or penal servitude*, it may be noted that a similar order of detention may be made if the court is satisfied that the crime was committed under the influence of drink, or that drunkenness was a contributing cause of the offence, AND it is admitted, or found by the jury, that the accused is a habitual drunkard. Evidence that the defendant is a *habitual drunkard* may, and, we presume, should, be given on the examination before the magistrate *prior to the committal*, and recorded in the usual way; otherwise it will be necessary to give seven days' notice that it is intended to charge habitual drunkenness in the indictment (61 & 62 Vict. c. 60, s. 1).

As to "permitting drunkenness," see *post*, p. 627.

Illicit Sales.

Illicit sales of
liquor.

And see
EXCISE ACT.
1860 (23 & 24
Vict. c. 113),
s. 37.

(e) Every person who sells or exposes for sale by retail any intoxicating liquor (i.) *without being duly licensed* to sell the same, OR (ii.) *at any place where he is not authorized by his licence to sell* the same, commit an OFFENCE. Every occupier of unlicensed premises on which liquor is sold will be guilty of an offence, and be punishable as though he had actually sold the liquor, if it be proved that he was "privy or consenting to the sale" (35 & 36 Vict. c. 94, ss. 3, 4).

A mere *servant* cannot be convicted under these sections, although he be the actual seller, if he acts *innocently* and does not make himself a party to the sale. If he did not act innocently he might be charged with "aiding and abetting" (*Williamson v. Norris*) (y). On the other hand, an innocent licence-holder would not be held responsible if his drayman, acting outside the scope of his employment, were to sell beer on his own account (*Boyle v. Smith*) (z). But, if liquor be sold on behalf of the owner by an agent who holds a licence, the owner will be liable unless he also holds a licence, inasmuch as the selling by the agent constitutes a selling by the owner

(y) [1899] 1 Q. B. 7; 68 L. J. Q. B. 31; 79 L. T. 415; 47 W. R. 94; 62 J. P. 790.

(z) [1906] 1 K. B. 432; 75 L. J. K. B. 282; 54 W. R. 519; 70 J. P. 115.

(*Dunning v. Owen*)(a). And if one, who is neither the licensee nor the agent or servant of the licensee, under cover of the licence, sells in the licensed house liquor which is his own and which he is selling for his own benefit, he may be convicted of selling without a licence; while the licensee may also be convicted of aiding and abetting such sale (*Peckover v. Defries*)(b).

There is provision for the protection of the *heirs and personal representatives* of a licence-holder (who dies before the expiration of his licence) until the next special session, or until the next but one if the special session falls within fourteen days after the death (cf. *Rose v. Frogley*) (c). The personal representative will, however, be liable to penalties in respect of any breach of public order that may occur on the premises (*McDonald v. Hughes*) (d). There is like provision for the protection of the trustee in case the licence-holder becomes *bankrupt* (cf. *ante*, p. 599).

Provision in case of death or bankruptcy.

If the charge is for a *third* or subsequent offence the defendant must be given the OPTION OF TRIAL BY JURY. (See, as to the procedure, *ante*, p. 65).

PENALTY.—*First offence*.—FINE, not exceeding 50*l.*, and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111), but possibly not exceeding one month (cf. *R. v. Hopkins*) (e); or IMPRISONMENT, with or without hard labour, for a term not exceeding ONE MONTH. Penalty.

Second offence.—FINE, not exceeding 100*l.*, and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111); or, IMPRISONMENT, with or without hard labour, for not more than THREE MONTHS. If the defendant is a licence-holder, the licence is forfeited absolutely.

Third offence.—FINE, not exceeding 100*l.*, and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111); or, IMPRISONMENT, with or without hard labour, for not more than SIX

(a) [1907] 2 K. B. 237; 76 L. J. K. B. 796; 71 J. P. 383; 23 T. L. R. 494.

(b) (1906) 95 L. T. 883; 71 J. P. 38; 21 Cox, 323; 23 T. L. R. 20.

(c) (1893) 62 L. J. M. C. 181; 69 L. T. 346; 57 J. P. 376.

(d) [1902] 1 K. B. 94; 71 L. J. K. B. 43; 85 L. T. 727; 66 J. P. 86.

(e) *Ante*, p. 414.

Penalty—
contd.

MONTHS. If the defendant is a licence-holder, the licence is forfeited absolutely.

For a *second* offence the court may order the defendant to be disqualified for a term not exceeding five years from holding a licence; for a *third* or *any* subsequent offence the disqualification may be for any term of years, or for ever.

The court may also, if it think fit, declare all intoxicating liquor found in the possession of the person convicted, and the vessels containing such liquor, to be forfeited. But the defendant should have an opportunity of showing cause against the forfeiture (*Gill v. Bright*) (*f*). It would seem to be the better opinion that, except in the case of a *first* offence, the penalty cannot be less than 12*l.* 10*s.* (And see *ante*, p. 449.) As to *proof* of previous convictions, see *ante*, pp. 29, 106, 136.

Search
warrant.

A justice, if satisfied by information upon oath that liquor is illegally sold (or kept for sale) by retail at any place within his jurisdiction, may issue a *search warrant* authorizing any constable to search for and seize the same, at any time or times within one month. Such constable may also demand the name and address of, and, if necessary, apprehend, any person found on the premises at the time of seizure, and such person will *prima facie* be deemed to have been there for an unlawful purpose (37 & 38 Vict. c. 49, s. 17; and see offence (*x*), *post*, p. 642, and the case of *Mackenzie v. Day* there cited).

If the court order the liquor and vessels to be forfeited, the forfeitures must be sold or disposed of as the court may direct, and the proceeds will be applied in like manner as penalties. If, however, there has been a search and seizure, the court may order that such proceeds be applied in the first instance in paying the expenses connected therewith (35 & 36 Vict. c. 94, s. 51 (*v*)).

Sale at clubs.

Clubs are now registered in case intoxicating liquor is sold on the premises; but *registration* does not constitute the premises "licensed premises" nor authorize a sale which would otherwise be illegal. No *licence* is necessary in the case of a *bona fide* club supplying liquor, upon payment, to its members (*Graff v. Evans*) (*g*). Such supply is, in effect, a distribution of common property; nor does it

(*f*) (1872) 41 L. J. M. C. 28; 36 J. P. 198; 25 L. T. 591.

(*g*) (1882) 8 Q. B. D. 373; 51 L. J. M. C. 25; 46 L. T. 347; 30 W. R. 380; 46 J. P. 262.

make any difference that the club is managed by directors on behalf of a limited company (*Newell v. Hemingway*) (h). And where the manager of a *bonâ fide* club, against the expressed orders of the committee, sold liquor to non-members, the court held that the committee were not liable, although the manager might be (*Newman v. Jones*) (i). But where a *proprietary* club was carried on by a limited company who (as distinguished from the general body of members) owned liquor and supplied it to the members, the company were held liable for selling without a licence to an "honorary member" (*Bowyer v. Percy Supper Club*) (k).

And in the case of another proprietary club carried on by a limited company, where a few shares had become the property of persons who were not members, it was held that the company was a separate legal entity from the members of the club and that the sale of liquor was neither in law nor in fact a distribution of common property (*National Sporting Club v. Cope*) (l).

As to the supply of liquor in a "club" for consumption "off" the premises except to a member on the premises, see *ante*, p. 602.

A licensed person must not, of course, sell under either an "on" or an "off" licence, except upon his licensed premises. He may send out liquor, but he must be careful not to do so in such circumstances as to make the transaction substantially a sale away from his premises (*Pasquier v. Neale*) (m). The provisions of the Licensing Acts "were not framed with a regard to the niceties which sometimes enter into the consideration of a contract for goods sold and delivered; those provisions are satisfied if the substantial elements of a sale take place on the licensed premises, though the beer is consumed or obtained off them" (per *Wills, J.*, in *Pletts v. Beattie*) (n). But, if orders are taken by travellers and the vendor

Selling away
from the
premises
licensed

(h) (1889) 58 L. J. M. C. 46; 60 L. T. 544; 53 J. P. 324.

(i) (1886) 17 Q. B. D. 132; 55 L. J. M. C. 113; 55 L. T. 327; 50 J. P. 373.

(k) [1893] 2 Q. B. 154; 57 J. P. 470; 69 L. T. 447; 42 W. R. 29.

(l) (1900) 82 L. T. 352; 48 W. R. 446; 64 J. P. 310.

(m) [1902] 2 K. B. 287; 71 L. J. K. B. 835; 51 W. R. 92; 67 J. P. 49; 20 Cox, 350.

(n) [1896] 1 Q. B. at p. 523; 60 J. P. 185; 65 L. J. M. C. 86; 74 L. T. 148.

Selling away
from the
premises
licensed—
contd.

undertakes delivery, it must clearly appear that there was a complete appropriation of the liquor to the purchaser before it left the licensed premises (*Pletts v. Campbell*) (o). In a recent case, a brewer's drayman went out with crates and bottles of beer, which did not bear the names of the customers for whom they were intended, nor were there any identifying marks upon the goods. The drayman, contrary to his instructions, delivered beer to a person who had not given a previous order, and was convicted of selling without being duly licensed. The brewers were subsequently convicted of "aiding and abetting" as there had been no sufficient appropriation of the liquor sent out by them (*Stansfeld v. Andrews*) (oo). And where the defendant, licensed in respect of premises at Worcester, had an agent at Cheltenham who took orders there *on unlicensed premises*, and transmitted them to Worcester, the defendant was held properly convicted for selling spirits by retail at Cheltenham without a licence (*Stallard v. Marks*) (p). It might, however, be different if no premises were provided for the agent and he acted merely as a traveller to take orders (*Stuckberry v. Spencer*) (q); while, even if the order be given to an agent at an unlicensed office, the vendor may, it seems, evade the penalty by causing the agent not to *accept* the order, but merely to pass it on to the licensed premises (*Stephenson v. Rogers*) (r). And, in several later cases, it has been held that taking an order at the customer's house, with a view to such order being forwarded to the licensed premises to be there dealt with by the licensed person, does not amount to a contract of sale, executory or otherwise, made at the customer's house: see, *e.g.*, *Strickland v. Whittaker* (s). Again, a publican must be careful how he makes alterations or additions to his premises, for if he opens any substantial addition to his premises he may be convicted of selling in the added part without a licence. The question whether the

Or on added
premises.

(o) [1895] 2 Q. B. 229; 64 L. J. M. C. 225; 73 L. T. 344.

(oo) (1909) 100 L. T. 529; 25 T. L. R. 259; 73 J. P. 167.

(p) (1878) 3 Q. B. D. 412; 47 L. J. M. C. 91; 38 L. T. 566; 42 J. P. 359.

(q) (1886) 55 L. J. M. C. 141; 51 J. P. 181.

(r) (1899) 80 L. T. 193; 63 J. P. 230; 15 T. L. R. 748.

(s) (1904) 90 L. T. 445; 52 W. R. 538; 68 J. P. 235; 20 T. L. R. 224.

premises remain *substantially* the same is usually a question of fact, not of law. "It requires local knowledge to decide these cases, as to which justices are made by law the judges" (*Ballam v. Wilts* (t); *Mahon v. Gaskell* (u); *R. v. Raffles* (x); *R. v. Sykes* (y); *Deer v. Bell* (z)). But see now s. 11 (ii.) of the Licensing Act, 1902, as to the *alteration* of licensed premises (*ante*, pp. 582, 594).

Holder of "Off" Licence Permitting Drinking "On."

- (f) If a person who has not an "on" licence sells intoxicating liquor, and the purchaser, *with his privity and consent*, drinks the liquor on the premises where it has been sold, or on any *highway* adjoining or near to such premises, the seller of the liquor commits an OFFENCE (35 & 36 Vict. c. 94, s. 5).

Seller of liquor privy and consenting to its being drunk on premises contrary to or without licence.

The section is clumsily drafted, though it appears to be directed not at illicit sales (*ante*, p. 610), but at evasions of the Act by the holders of "off" licences. The word "premises" includes any premises adjoining or near the premises where the liquor was sold if belonging to the seller of the liquor, or under his control, or used by his permission. But the drinking must be with the *privity and consent* of the seller, so that the section would not cover a case where the liquor was carried to a neighbour's cottage, and drunk partly there and partly on the highway, with the knowledge but not with the connivance of the seller (*Bath v. White*) (a).

PENALTY.—*First offence*.—FINE, not exceeding 10*l.*, and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111). Penalty.

Second offence.—FINE, not exceeding 20*l.*, and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111).

It is further provided that similar penalties shall be incurred by the holder of an "off" licence who takes or Holder of "off" licence

(t) (1880) 44 J. P. 74.

(u) (1878) 42 J. P. 583.

(x) (1876) 1 Q. B. D. 207; 45 L. J. M. C. 61; 34 L. T. 180; 40 J. P. 68.

(y) (1876) L. R. 1 Q. B. D. 52; 45 L. J. M. C. 39; 33 L. T. 568; 40 J. P. 22.

(z) (1894) 64 L. J. M. C. 85; 58 J. P. 513.

(a) (1878) 3 C. P. D. 175; 26 W. R. 617; 42 J. P. 375.

evading conditions there of by selling away from premises.

carries, or suffers any other person to take or carry, intoxicating liquor away from the premises of such licensed person for the purpose of being sold on his account or for his benefit or profit, and of being drunk or consumed elsewhere than on the licensed premises (35 & 36 Vict. c. 94, s. 6). This section is in terms confined to offenders who already hold "off" licences, and it would seem to be intended to complete the provision necessary to prevent evasions of the conditions of the "off" licence. It applies to cases where the liquor was not actually sold on the licensed premises, but was taken away for the purpose of being sold.

Keeping Open or Selling during Closing Hours.

Selling or
keeping open
&c., during
closing hours.

(g) Subject to the saving as to *bonâ fide* travellers and lodgers hereinafter mentioned, every person who, *during the hours when licensed premises are directed to be closed*, (a) sells or exposes for sale in such premises any intoxicating liquor, or (β) opens or keeps open the premises for such sale, or (γ) allows liquors to be consumed there (even although they had been purchased before the hours of closing), commits an OFFENCE (37 & 38 Vict. c. 49, s. 9). The holder of a six-day licence may not, in any circumstances, sell on Sunday to anyone not lodging in his house (*ib.*, s. 10).

Theatres.

The provisions as to "closing" apply to *theatres*, in which liquor may be sold under licences obtained from the *excise* without application for a justices' certificate (*Gallagher v. Rudd*) (b). The same principle of construction, if it is to be adopted, would seem to apply to the Acts regulating the sale of intoxicating liquors in packet-boats and canteens (per *Wright, J.*, in *Gallagher v. Rudd* (c)). And as to *canteens*, see now *post*, p. 644.

Railway
stations.

And the enactment covers premises in which intoxicating liquors are sold in pursuance of an *excise* "retail" licence for wines or spirits, not to be consumed on the premises (*Martin v. Barker* (d); cf. *ante*, p. 586). But

(b) [1898] 1 Q. B. 114; 67 L. J. Q. B. 65; 77 L. T. 367; 46 W. R. 108; 61 J. P. 789; and *post*, p. 903.

(c) *Supra*.

(d) (1881) 50 L. J. M. C. 109; 45 L. T. 214; 29 W. R. 789; 45 J. P. 749.

there is special provision made to enable intoxicating liquors to be sold at any time at a *railway station* to persons "arriving at or departing from such station by railroad" (*ib.*, s. 10). Merely purchasing a ticket without any intention of travelling by train would not bring a man within the proviso; but, if he buys a ticket, purchases liquor, and then "departs" to a neighbouring station by train, there can be no conviction, although the journey were projected and undertaken merely to obtain the liquor (*Williams v. Macdonald*) (*e*).

As to *proof* of sale or consumption, see *ante*, p. 604; and as to directing the prosecution of persons *falsely pretending* to be travellers or lodgers, see *post*, p. 624.

PENALTY.—*First offence*.—FINE, not exceeding 10*l.*, and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111). *Second offence*.—FINE, not exceeding 20*l.*, recoverable similarly.

All premises in which intoxicating liquors are sold by retail are required to be closed as follows, that is to say:—

(1) If situate within the metropolitan district—

(a) On Saturday night from midnight until one o'clock in the afternoon on the following Sunday; and

(β) On Sunday night from eleven o'clock until five o'clock on the following morning; and

(γ) On all other days from half an hour after midnight until five o'clock on the same morning; and

(2) If situate beyond the metropolitan district and in the metropolitan police district or in a town or in a "populous place" (*i.e.*, any collection of houses containing at least 1,000 inhabitants, declared to be such by the county quarter sessions),—

(a) On Saturday night from eleven o'clock until half an hour after noon on the following Sunday; and

(β) On Sunday night from ten o'clock until six o'clock on the following morning; and

(γ) On the nights of all other days from eleven o'clock until six o'clock on the following morning; and

(3) If situate elsewhere than in the metropolitan district or the metropolitan police district or such town or populous place as aforesaid,—

(*e*) [1899] 2 Q. B. 308; 68 L. J. Q. B. 678; 80 L. T. 758; 63 J. P. 501; 47 W. R. 701; 15 T. L. R. 343.

- (a) On Saturday night from ten o'clock until half an hour after noon on the following Sunday; and
- (β) On Sunday night from ten o'clock until six o'clock on the following morning; and
- (γ) On the nights of all other days from ten o'clock until six o'clock on the following morning.

On Sunday,
Christmas
Day, and
Good Friday.

Such premises, wherever situate, shall, save as herein after mentioned, be closed on Sunday afternoon from three or half-past two (according as the hour of opening shall be one o'clock in the afternoon or half an hour after noon) until six o'clock.

Such premises, wherever situate, shall be closed on Christmas Day and Good Friday, and on the days preceding Christmas Day and Good Friday respectively, as if Christmas Day and Good Friday were respectively Sunday, and the preceding days were respectively Saturday; but this provision shall not alter the hours during which such premises shall be closed on Sunday when Christmas Day immediately precedes or succeeds Sunday (37 & 38 Vict. c. 49, s. 3). The holder of a "six-day" licence may keep his house open on Christmas Day during the same hours as other licensed persons, provided, of course, that Christmas Day does not fall on a Sunday (*Davies v. Harrison*) (*ve*).

Order of
justices as to
hours on Sun-
day, Good
Friday, and
Christmas
Day in the
country.

It is, too, further provided that the licensing justices may, if they think fit, as respects premises in which intoxicating liquors are sold, when situate in any place beyond the metropolitan district (for the purpose of accommodating the hours of closing on Sunday, Good Friday, and Christmas Day to the hours of public worship in such place), by order direct that such premises shall remain closed until one o'clock in the afternoon instead of half an hour after noon, and in that case such premises shall be closed in the afternoon from three till six o'clock instead of from half-past two until six o'clock (37 & 38 Vict. c. 49, s. 6).

In case of
"early clos-
ing" licence.

The holder of an early closing licence must close his premises at night an hour earlier than the ordinary hour at which such premises would be closed (37 & 38 Vict. c. 49, s. 7).

(*ve*) [1909] 2 K. B. 104; 78 L. J. K. B. 626; 100 L. T. 899; 25 T. L. R. 449; 73 J. P. 268.

Under the Sunday Closing (Wales) Act (44 & 45 Vict. c. 61) licensed premises situate in Wales are to be closed throughout Sunday, but the Act does not operate to close houses on Christmas Day or Good Friday (*Forsdike v. Colquhoun*) (*f*); nor to close refreshment houses (*Berni v. Thorney*) (*g*). In Wales.

Any two justices may order licensed premises to be closed in time of riot or expected riot, under a PENALTY of 50*l.* (35 & 36 Vict. c. 94, s. 23); and as to special exemptions from closing in certain cases, see *ante*, p. 589. Closing in time of riot.

The court must follow Greenwich mean time in considering whether or not there has been any sale or consumption of liquor or any opening of the premises during prohibited hours (43 & 44 Vict. c. 9). Computation of time.

As to what is evidence of a sale or consumption, see *ante*, p. 604.

It is to be observed that the offence of *keeping open* the premises for the sale of liquor during prohibited hours is distinct from the offence of *selling, &c.*, during those hours; and each of these offences is, again, distinguishable from that of *allowing liquor to be consumed* although purchased before the closing hour. The question, therefore, whether there is evidence sufficient to support the information may depend upon which charge has been preferred against the defendant. A publican is not bound to turn out his customers at closing time; but, if they remain and purchase liquor, or consume liquor already purchased by them, the publican will be liable. And, if the guests are found drinking or even with beer in their glasses, the court would be justified in convicting for allowing liquor "to be consumed," and, indeed, in the absence of evidence to the contrary, in presuming that there had been a sale and convicting of *selling during prohibited hours* (cf. *ante*, p. 604, and *Tennant v. Cumberland* (*h*); *Cates v. South*) (*i*). If, however, the doors are really closed so that a person outside cannot come in, or get liquor supplied to him whilst outside, there can be no conviction for *opening or keeping open*, although customers remain Distinction between "keeping open" and "selling, &c.," during prohibited hours.

(*f*) (1883) 11 Q. B. D. 71; 49 L. T. 136; 47 J. P. 393.

(*g*) (1895) 64 L. J. M. C. 271; 72 L. T. 630; 43 W. R. 411.

(*h*) (1859) 1 E. & E. 401; 23 J. P. 57.

(*i*) (1859) 1 L. T. N. S. 365; 23 J. P. 739.

Distinction
between
"keeping
open" and
"selling, &c.,"
during pro-
hibited hours
—*contd.*

"Grocers'"
licences.

drinking on the premises (*Jeffery v. Weaver* (k); *Metro-
politan Police Commissioner v. Roberts* (l). Whether the
house, if open, was being kept open for the sale of
intoxicating liquors is, of course, a question of fact for the
magistrates, and very slight evidence has been held
sufficient to support convictions on this charge (*vide*
Brewer v. Shepherd (m); *Pearse v. Gill* (n); *Finch v.*
Blundell (o). But, on the other hand, reference may be
made to *Lloyd v. Barnett* (p), where, although the doors of
the inn were kept open after the closing hour and men
were found in the bar with glasses containing liquor
before them, a conviction was quashed on the finding of
fact that no one would have been supplied had he
entered and that no liquor was sold after the closing hour.
If liquor be purchased, paid for, and appropriated during
the hours when the inn is open, and, in pursuance of an
arrangement made at the time and as part of the contract of
purchase, is delivered to the customer during closing
hours, the publican might be convicted of opening for
sale during prohibited hours (per *Alverstone, C.J.*, and
Kennedy, J., *Ridley, J. diss.*); at any rate, this would be
so if there were no sufficient appropriation of the liquor
(*Noblett v. Hopkinson*) (q). If the licensed person holds
an "off" licence and carries on some other trade (say,
that of a grocer or a draper) on the premises, the liquor
should be covered up during closing hours so that it is
not exposed to the view of customers attending the shop.
The keeping open of the premises is in itself no offence
unless it is with the object of continuing the sale of
intoxicating liquors (*Tassell v. Orenden* (r); *Brigden v.*
Heighes (s); *Ex parte Joynt* (t). But the mere delivery

(k) [1899] 2 Q. B. 449; 68 L. J. Q. B. 817; 47 W. R. 638; 63 J. P. 663.

(l) [1904] 1 K. B. 369; 73 L. J. K. B. 231; 52 W. R. 560; 20
T. L. R. 105; 68 J. P. 39.

(m) (1872) 36 J. P. 373.

(n) (1877) 41 J. P. 742.

(o) (1862) 5 L. T. N. S. 672; 26 J. P. 71.

(p) (1900) 82 L. T. 804; 64 J. P. 708; 19 Cox, 540.

(q) [1905] 2 K. B. 214; 74 L. J. K. B. 544; 92 L. T. 462; 69
J. P. 269; 53 W. R. 637; 21 T. L. R. 448.

(r) (1877) 2 Q. B. D. 383; 46 L. J. M. C. 228; 36 L. T. 696;
41 J. P. 710; 25 W. R. 692.

(s) (1876) 1 Q. B. D. 330; 45 L. J. M. C. 58; 34 L. T. 242; 40
J. P. 661.

(t) (1874) 38 J. P. 390.

of liquor previously ordered and paid for (if it were not specifically appropriated to the buyer) has been held to be an offence within the section (*Saunders v. Thorney*) (u). And, as we have seen, even if there were specific appropriation, a mere delivery during closing hours would probably be held sufficient to support a conviction, provided that the arrangement for such delivery formed part of the contract of sale (*Noblett v. Hopkinson*) (x).

A licensed person will not be liable for supplying intoxicating liquors to his "private friends" if they are *bonâ fide* entertained by him at his own expense (37 & 38 Vict. c. 49, s. 30). But he must be careful not to allow his friends to carry on any gaming, or to play at billiards during closing hours (*ante*, p. 331); and he cannot, for the mere purpose of evading the provisions of the Act, convert his customers into private friends when the hour of closing arrives (*Corbett v. Haigh*) (y). However, unless it can be established that his acts were a mere evasion of the statute, a publican may give away liquor at any time (*cf. Petherick v. Sargent*) (z).

Licensed person entertaining private friends.

It is, too, further provided that nothing in the Licensing Acts is to preclude a person licensed to sell liquor to be CONSUMED ON THE PREMISES from selling at any hour to *bonâ fide* TRAVELLERS or to PERSONS LODGING in his house (37 & 38 Vict. c. 49, s. 10); and there is no objection to such traveller or lodger entertaining his friends on the licensed premises, provided, of course, that he purchases and pays for all the liquor supplied to them (*Pine v. Barnes*) (a); *Oliver v. Loudon*) (b).

Bonâ fide travellers and lodgers.

Should the licensed person fail to establish that the customer was a *bonâ fide* traveller, he is, nevertheless, entitled to an acquittal if the court is satisfied that he TRULY BELIEVED that the customer was a *bonâ fide* traveller, AND, further, that he took all reasonable precautions to ascertain if such were the case (*ib.*, s. 10). As to the court directing the institution of proceedings against

(u) (1898) 78 L. T. 627; 62 J. P. 404; 14 T. L. R. 346.

(x) *Supra* (q).

(y) (1880) 5 C. P. D. 50; 42 L. T. 185; 28 W. R. 430; 44 J. P. 39.

(z) (1862) 6 L. T. N. S. 48; 26 J. P. 135.

(a) (1888) 20 Q. B. D. 221; 57 L. J. M. C. 28; 58 L. T. 520; 36 W. R. 473; 52 J. P. 199.

(b) (1896) 60 J. P. 248.

Bonâ fide
travellers and
lodgers—
cond.

the customer, see *post*, p. 624; and as to sales by the holder of a six-day licence on Sunday, see *ante*, p. 616.

During prohibited hours, the publican may not sell liquor to be consumed “off” the premises even to a *bonâ fide* traveller, and the last cited clause would not, in such case, afford him any protection (*Mountifield v. Ward*) (c).

A traveller, *i.e.*, a person travelling either for business or pleasure, is not to be considered as within the above exemption, unless he lodged during the preceding night three miles at least (by the nearest public thoroughfare, by land or sea) from the place where he demands to be supplied with liquor (*ib.*, s. 10). In *Sheasby v. Oldham* (d) the defendant, having driven from home a distance of twenty miles, went to a public-house, had refreshment, and, after seeing the sights of the town, visited a second public-house, and then, before returning, went again to the first house and had more refreshment. It was held that (a) justices were wrong in convicting him for visiting the second house during prohibited hours, as he was (being undoubtedly a *bonâ fide* traveller as to the first inn) entitled to go to any other inn he chose in the town, and was not bound to confine his refreshments to those obtained at the former house, and (b) that the justices were not entitled to say that, having refreshed himself at the first house, he needed no further refreshment. “The exemption is not in favour of travellers who are *bonâ fide* thirsty, but in favour of travellers who are *bonâ fide* travellers, and, if they are *bonâ fide* travellers, it applies to them whether thirsty or not”: per *Cave, J.*

But, in a later case, where a large number of persons sought refreshment on a Sunday at a licensed house three and a half miles from Northampton, and stated that they had walked from that town, the justices, having found as a fact that these persons had gone there solely to procure beer, held that they were not *bonâ fide* travellers, and the Court upheld the conviction of the landlord, who had not taken reasonable precautions (*Penn v. Alexander*) (e).

(c) [1897] 1 Q. B. 326; 66 L. J. Q. B. 246; 76 L. T. 202; 45 W. R. 288; 61 J. P. 216; 13 T. L. R. 159; 18 Cox, 515.

(d) (1891) 60 L. J. M. C. 81; 55 J. P. 214.

(e) [1893] 1 Q. B. 522; 68 L. T. 355; 62 L. J. M. C. 65; 41 W. R. 392; 57 J. P. 118; 17 Cox, 615.

A publican may close his premises when he pleases, but it is an indictable misdemeanour for the landlord to refuse to receive a guest, *who is a traveller*, at his inn, if the guest be fit, and there is accommodation for him. This would seem, however, to be true only of an inn proper, and not of a mere tavern or beershop (cf. *R. v. Rymer* (f); *Lamond v. Richard*) (g).

Refusing to receive guest.

Being on Premises during Closing Hours.

- (h) If any person is *found on licensed premises during closing time*, he will be liable to a PENALTY, unless he can satisfy the court that he was an inmate, servant, or a lodger on such premises, or a *bonâ fide* traveller, or that otherwise his presence was not in contravention of the provisions of the Licensing Act, 1872, with respect to the "closing" of licensed premises (35 & 36 Vict. c. 94, s. 25).

Person found on licensed premises during closing hours.

It is, we presume, clear that the person would not be liable if he were a private friend of the landlord, even if he were consuming liquor gratuitously supplied by the landlord, *ante*, p. 621; and as to *bonâ fide* travellers, see *ante*, p. 621. If the "private friend" were playing cards for money, although the *landlord* might be liable to a penalty (*post*, p. 624), the presence of the friend would not be in contravention of any provision as to the "closing" of licensed premises, so as to bring such *friend* within the section last cited. As to grocers' licences, see *ante*, p. 620.

PENALTY.—FINE, not exceeding 2*l.*, and, in default of distress, imprisonment, *without* hard labour, according to scale (p. 111).

Penalty.

- (i) If a person found on licensed premises during *closing hours* is required by a *constable* to give his *name and address*, and fails to do so, or gives a *false name* or address, or supplies *false evidence* with respect to such name and address, he commits an OFFENCE (35 & 36 Vict. c. 94, s. 25).

Person found on licensed premises during closing hours, refusing, or giving false, name or address.

If the constable has reasonable ground to suppose that the name or address given to him is false, he may require "evidence" of its correctness; and, if the person

(f) (1877) 2 Q. B. D. 136; 46 L. J. M. C. 108; 41 J. P. 199; 25 W. R. 415.

(g) [1897] 1 Q. B. 541; 66 L. J. Q. B. 315; 76 L. T. 141.

found on the premises then fails to give his name and address or to supply such evidence, the constable is empowered to apprehend him without warrant, and bring him before a magistrate (*ib.*).

Penalty. PENALTY.—FINE, not exceeding 5*l.*, and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111).

Person falsely pretending to be a traveller or lodger.

(j) If a person, *by falsely representing himself to be a traveller or a lodger*, buys or obtains, or attempts to buy or obtain, any *intoxicating liquor* during the hours in which the licensed premises are closed under the Licensing Acts, he commits an offence (35 & 36 Vict. c. 94, s. 25).

On dismissing an information against a licensed person who has, in the opinion of the court, taken all reasonable precautions to ascertain if his customer were a *bonâ fide* traveller, the court may direct proceedings to be taken against the customer for this offence (37 & 38 Vict. c. 49, s. 10).

Penalty. PENALTY.—FINE, not exceeding 5*l.*, and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111).

Licensed Person permitting Gaming.

Licensed person permitting gaming, &c., on licensed premises.

(k) Any *licensed person* commits an OFFENCE if he
 (a) Suffers any *gaming* or any *unlawful game* to be carried on in his premises; or
 (β) Opens, keeps, or uses, or suffers his house to be opened, kept, or used, in contravention of the Act 16 & 17 Vict. c. 119, intituled “An Act for the Suppression of Betting Houses” (35 & 36 Vict. c. 94, s. 17).

If the licensed person holds an “occasional” licence only, he will, nevertheless, be liable (37 & 38 Vict. c. 49, s. 20).

Penalty. PENALTY.—*First offence*.—FINE, not exceeding 10*l.*, and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111).

Second offence.—FINE, not exceeding 20*l.*, recoverable as above.

Distinction between “gaming” and “unlawful games.”

As to clause (a), it will be observed that the statute distinguishes between “GAMING” and “UNLAWFUL GAMES.” Thus, under ancient statutes, almost all games

of mere *chance* are in themselves "unlawful," such as ace of hearts, faro, basset, hazard, and all such games of cards as are not games of skill (*Jenks v. Turpin*) (*h*). But the playing of cards or dominoes, or other like games, is not in itself *unlawful*, if the game played is a game of *skill*. It would, however, become "gaming," within the meaning of the section, if the game were played *for money or money's worth*. It is clear that a game may be lawful in itself as being mostly a game of skill, as, *e.g.*, "puff and dart," yet, if money were staked on the result, or if the game were played for money or money's worth, it would then be "gaming" (*Bew v. Harston*) (*i*). If, however, the game is not unlawful in itself and is not played for stakes, an offence is not committed by the licence-holder suffering prizes to be given to the players by third parties (*Lockwood v. Cooper*) (*k*). The players in such a case might win but could not lose. The game of billiards is a lawful game, and an alehouse keeper does not require a special licence to keep a billiard table, though he must not, as we have seen (p. 332), permit his lodgers, or even his private friends, to play on the table during closing hours (*Orenden v. Raymond*) (*l*). But the licensee would be liable should he allow a game of billiards or any game of cards to be played *at any time of day*, if, to his knowledge, money was staked, or there was betting on the game. And this would be so whether the players were his customers or his private friends (*Patten v. Rhymer*) (*m*); *Hare v. Osborne* (*n*); *Cooper v. Osborne* (*o*).

The section does not contain the word "knowingly," and it is not necessary to show that the landlord actually knew of the gaming, if he had committed the management of the premises to a servant or other person who

Whether necessary to prove guilty knowledge.

(*h*) (1884) 13 Q. B. D. 505; 53 L. J. M. C. 161; 50 L. T. 808; 49 J. P. 20.

(*i*) (1878) 3 Q. B. D. 454; 47 L. J. M. C. 121; 26 W. R. 915; 42 J. P. 808.

(*k*) [1903] 2 K. B. 428; 72 L. J. K. B. 690; 89 L. T. 306; 52 W. R. 48; 67 J. P. 307; 19 T. L. R. 610.

(*l*) (1876) 40 J. P. 727; 34 L. T. 698.

(*m*) (1860) 29 L. J. M. C. 189; 2 L. T. N. S. 352; 3 E. & E. 1; 8 W. R. 496; 24 J. P. 342.

(*n*) (1876) 34 L. T. 294.

(*o*) (1876) 35 L. T. 347; 40 J. P. 759.

Liability for
acts of
servant.

did know what was taking place. And, in one case, where the publican had placed the skittle alley in charge of a separate attendant, who permitted gambling, the publican was held to have been rightly convicted, although he had given general directions to the attendant not to permit any gambling (*Bond v. Evans*) (*p*). Even if the premises are at a late hour committed to the charge of the "boots," who does not take reasonable care to prevent gaming, the landlord may be convicted (*Crabtree v. Hole*) (*q*). But where a "potman" knew of the gaming, and did not prevent it, it was held that his master, who was in another part of the premises, and knew nothing of the matter, was properly acquitted, in the absence of any evidence that the potman was "in charge" (*Somerset v. Hart*) (*r*). And cf. *post*, p. 629. Allowing betting on horse racing is not "suffering gaming to be carried on" within the meaning of clause (*a*), see *Keep v. Stevens* (*rr*); as to clause (*β*) there are but few decisions, since it often happens that, where a licensed person is guilty of this offence, proceedings are taken under the Act for the suppression of betting-houses, the penalties imposed under that Act being very severe (*ante*, BETTING, pp. 310, 316; and see 35 & 36 Vict. c. 94, s. 59, and *Sims v. Pay* (*s*)). To secure a conviction under clause *β*, there must be evidence of more than *one* act of user (*Jayes v. Harris*) (*ss*).

Betting Act,
1853.

It may, however, be here mentioned that, where a bookmaker and his clerk, on five consecutive days, used the bar of an inn for the purpose of betting on horse-races with the customers who frequented the inn, it was held that the *landlord*, who was privy to these proceedings, ought to have been convicted under the Betting Act (*Hornsby v. Raggett*) (*t*); and, in another case, where a bookmaker on occasion used a private bar for the like purpose, although he had no exclusive occupation of it,

(*p*) (1888) 21 Q. B. D. 249; 57 L. J. M. C. 105; 59 L. T. 411; 36 W. R. 767; 52 J. P. 613.

(*q*) (1879) 43 J. P. 799.

(*r*) (1884) 12 Q. B. D. 360; 53 L. J. M. C. 77; 48 J. P. 327.

(*rr*) (1909) 100 L. T. 491; 73 J. P. 112.

(*s*) (1889) 58 L. J. M. C. 39; 60 L. T. 602; 53 J. P. 420.

(*ss*) (1908) 99 L. T. 56; 72 J. P. 364; 21 Cox, 639.

(*t*) [1892] 1 Q. B. 20; 61 L. J. M. C. 24; 66 L. T. 21; 40 W. R. 111; 56 J. P. 135.

it was held that the *bookmaker* ought to be convicted (*MacWilliam v. Dawson*) (u). And cf. *Davis v. Stephenson* (x), where the bets were made with a bookmaker, on waste ground at the back of the licensed premises, by depositing with him sealed packets. The servant of the licence-holder at intervals fetched the packets to the house, where they were afterwards opened by the bookmaker. It was held that *the licence-holder* could not be convicted of suffering the bookmaker to use *the house* as a betting-house. And see other decisions cited *ante*, pp. 319—322.

Betting Act,
1853—*cont.*

Licensed Person permitting Drunkenness, &c.

Procuring Drink for Drunken Person.

(1) A *licensed person* commits an OFFENCE if

(a) He permits drunkenness or any violent, quarrelsome, or riotous conduct to take place on his premises; or

(β) He sells any intoxicating liquor to any drunken person (35 & 36 Vict. c. 94, s. 13).

If the licensed person holds an “occasional” licence only, he will nevertheless be liable (37 & 38 Vict. c. 49, s. 20). As to *proof of sale*, see *ante*, p. 604.

PENALTY.—*First offence*.—FINE, not exceeding 10*l.*, and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111).

Second offence.—FINE, not exceeding 20*l.*, recoverable as above.

It seems that, if liquor be sold to a customer who is *in fact* drunk, the licensed person may be convicted under clause (β), although the customer did not show such signs of drunkenness as would have indicated to a reasonable man that he was in a state of intoxication (*Cundy v. Le Cocq*) (y). This decision appears to be based on the absence of the word “knowingly” from the section, and it could not be extended to an offence under clause (a), which is governed by the word “permits,” a

Licensed person permitting drunkenness, &c., or selling to a drunken person.

Form of Information,
post, p. 1225.

Burden of proof.

(u) (1892) 56 J. P. 183.

(x) (1890) 24 Q. B. D. 529; 59 L. J. M. C. 73; 62 L. T. 436; 38 W. R. 492; 54 J. P. 565.

(y) (1884) 13 Q. B. D. 207; 53 L. J. M. C. 125; 51 L. T. 265 32 W. R. 769; 48 J. P. 599.

Burden of
proof—*cont.*

word which certainly implies either that the defendant actually knew of the drunkenness or that he would have known of it if he had exercised ordinary care and supervision in the conduct of his business (see *Somerset v. Wade*) (z). It is now, however, provided that “where a licensed person is charged with *permitting drunkenness* on his premises, and it is *proved that any person was drunk on the premises*, it shall LIE ON THE LICENSED PERSON to *prove* that he and the persons employed by him TOOK ALL REASONABLE STEPS FOR PREVENTING DRUNKENNESS ON the premises” (2 Edw. 7, c. 28, s. 4). That is to say, the mere presence of a drunken person constitutes a *prima facie* case against the publican. If two men, of whom one is drunk and the other sober, enter the premises together, and the latter orders and pays for drink to be supplied to the pair, the landlord may be convicted under clause (β) (*Scatcherd v. Johnson*) (a). And it is now made an OFFENCE to procure drink for a drunken person: see *post*, p. 630. In one case, a man who had been drinking on licensed premises was found, three-quarters of an hour after he left the inn, drunk in a ditch, and the court held that there was some evidence to support a conviction under this section (*Ex parte Ethelstane*) (b). But it may be doubted whether there are many magistrates who would convict on such slight evidence.

In a very recent case, it appeared that a guest had arrived at the defendant's hotel, *after the closing hour*, and engaged a room. The guest was, at that time, drunk to the knowledge of the hotel manager, and was shortly afterwards found drunk upon the premises by a constable. It was held that, inasmuch as a publican may refuse to admit and may turn out any drunken person (see (q), *post*, p. 634), the defendant was properly convicted of “*permitting drunkenness*” (*Thompson v. Mackenzie*) (c). The licence-holder was unable, in these circumstances, to discharge the onus cast upon him by

(z) [1894] 1 Q. B. 574; 63 L. J. M. C. 126; 42 W. R. 399; 70 L. T. 452; 58 J. P. 231.

(a) (1888) 57 L. J. M. C. 41; 52 J. P. 389.

(b) (1875) 33 L. T. 339; 40 J. P. 39.

(c) [1908] 1 K. B. 905; 77 L. J. K. B. 605; 98 L. T. 896; 72 J. P. 150; 21 Cox, 620; 24 T. L. R. 330.

2 Edw. 7, c. 28, s. 4, of showing that he took "all reasonable steps for preventing drunkenness." So, again, where private friends of the wife of the licensee remained after closing time and got drunk, although no drinks were supplied except such as were "stood" by her. Two of the guests were found drunk on the premises at 1 A.M. (*Lawson v. Edminson*) (cc).

The offence of "permitting drunkenness" is distinct from that of "selling to a drunken person" (35 & 36 Vict. c. 94, s. 13, *ante*, p. 627); but it is obvious that, if a publican sold liquor to a man whom he knew to be already drunk, the publican might be proceeded against on either charge; whereas, if he simply suffered the man to remain on his premises, he could be convicted only of the first-named offence (*Edmunds v. James* (d); *Hope v. Warburton*) (e). If the *licensed person himself* gets drunk, he could not be convicted under this section; but, if he were discovered in such a condition *during open hours* (at any rate if he were in a portion of the premises used by the public), he might be charged as "found drunk on licensed premises" (*Warden v. Tye* (f); *Lester v. Torrens*) (g).

The licensed person is liable to be proceeded against *under this section*, although he had no personal knowledge of the matters giving rise to the charge, if his *manager or servant* is shown to have permitted drunkenness or violence, or sold liquor to a drunken person. This, moreover, would appear to be so even if the manager or servant were acting in direct disobedience to the express orders of the licensed person, provided that such manager or servant were acting *within the scope of his employment*. "The scope of the *manager's authority in my view receives its limitations from the scope of his employment*; authority is given to him to do all acts within the scope of his employment. It makes no

Liability for
acts of
manager or
servant.

(cc) [1908] 2 K. B. 952; 78 L. J. K. B. 36; 99 L. T. 797; 25 T. L. R. 11; 72 J. P. 479. Cf. *Soutar v. Auchinachie*, [1909] S. C. (J.) 16.

(d) [1892] 1 Q. B. 18; 61 L. J. M. C. 56; 65 L. T. 675; 56 J. P. 40.

(e) [1892] 2 Q. B. 134; 61 L. J. M. C. 147; 66 L. T. 589; 40 W. R. 510; 56 J. P. 328.

(f) (1877) 2 C. P. D. 74; 46 L. J. M. C. 111; 35 L. T. 852; 41 J. P. 120.

(g) (1877) 2 Q. B. D. 403; 46 L. J. M. C. 280; 41 J. P. 821; and see *ante*, p. 605.

difference for the purposes of this section that the licensee has given private orders to his manager not to sell to drunken persons": per *Russell, C.J.*, in *Commissioners of Police v. Cartman* (*h*). The principle of *Somerset v. Hart* (*i*) and the other "gaming" cases is inapplicable to proceedings under this section, the supply of liquor being within the scope of the employment of a publican's servant, whereas the permitting of gambling is entirely outside such employment. See also *Collman v. Mills* (*k*).

Proving
"knowledge"
by statements
made in
presence of
servant.

As to proving "knowledge" by means of *statements made in the presence of the servant*, see *Worth v. Brown*, cited 62 J. P. 658. "Substitute," said *Collins, J.*, "the knowledge of the barmaid in charge for the knowledge of the licensed person, then anything said in the presence of the substituted person is the same as if it were said in the presence of the licensed person . . . Evidence of *knowledge* in the shape of statements made in her presence, not contradicted by her, becomes admissible."

PROCURING
DRINK FOR A
DRUNKEN
PERSON.

Any person who, being on *any premises* licensed for the sale of any intoxicating liquor, whether for consumption *on or off* such premises, (*a*) procures or attempts to procure any intoxicating liquor for consumption by any drunken person, or (*β*) aids and abets any drunken person in obtaining or consuming any intoxicating liquor on such premises, commits an OFFENCE (2 Edw. 7, c. 28, s. 7).

Penalty.

PENALTY.— FINE, not exceeding 2*l.*, recoverable by *distress*, and, in default, imprisonment, *without* hard labour, according to scale (p. 111); or

IMPRISONMENT, with or without hard labour, for not more than ONE MONTH.

Licensed per-
son permit-
ting premises
to be habitual
resort of
reputed
prostitutes.

Licensed Person permitting Assembly of Prostitutes.

(*m*) An OFFENCE is committed by any *licensed person* who *knowingly* permits his premises to be the *habitual resort* of or *place of meeting* of REPUTED PROSTITUTES, whether the object of their so resorting or meeting is or is not prostitution. If, however,

(*h*) [1896] 1 Q. B. at p. 657; 65 L. J. M. C. 113; 74 L. T. 726; 60 J. P. 357; 44 W. R. 637; 12 T. L. R. 334.

(*i*) *Ante*, p. 626.

(*k*) Cited *ante*, p. 351.

prostitutes resort to the house for the purpose of refreshment, as they are undoubtedly entitled to do, the licensed person cannot be convicted unless they remain longer than is necessary for the purpose of obtaining reasonable refreshment (35 & 36 Vict. c. 94, s. 14).

If the licensed person holds an "occasional" licence only, he will, nevertheless, be liable (37 & 38 Vict. c. 49, s. 20).

It is not very clear what is the precise effect to be given to the word "knowingly" in this section, but it is possible that its use might protect a licensed person from liability for the acts of his manager or servant (at any rate, if not "in charge" of the premises), unless there were something to indicate actual knowledge or connivance on his part. It would seem, however, that, if the justices determined to convict for the act of a servant, the court above would be slow to interfere (cf. *Mullins v. Collins*) (l). The onus of proof, of course, rests on the prosecutor (*Miller v. Dudley J.J.*) (m).

PENALTY.—*First offence*.—FINE, not exceeding 10*l.*, and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111). Penalty.

Second offence.—FINE, not exceeding 20*l.*, and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111).

Permitting Licensed Premises to be a Brothel.

- (n) An OFFENCE is committed by any *licensed person* who permits his premises to be a BROTHEL (35 & 36 Vict. c. 94, s. 15). If the licensed person holds an "occasional" licence only, he will, nevertheless, be liable (37 & 38 Vict. c. 49, s. 20). Licensed person permitting premises to be a brothel.

The section is strangely framed, but seems clearly to confer, by implication, power on justices to convict summarily for this offence. This does not, however, take away the remedy by indictment if that course is preferred (35 & 36 Vict. c. 94, s. 59). Or, summary proceedings may be commenced under the Criminal Law Amendment Act, 1885 (*ante*, p. 345), which gives power to impose a term of imprisonment without the option of a fine.

(l) Cited *post*, p. 633.

(m) (1898) 46 W. R. 606.

As to the meaning of "brothel," see *R. v. Stannard* (*n*); *R. v. Barratt* (*o*); *R. v. JJ. of Holland* (*p*); and as to the information, see *Ex parte Burnby*, cited *ante*, p. 71.

Penalty.

PENALTY.—FINE, not exceeding 20*l.*, and, in default of distress, imprisonment, *without* hard labour, according to scale (p. 111).

Forfeiture.

The licence-holder, moreover, FORFEITS his licence and is *for ever* disqualified from holding any licence for the sale of intoxicating liquors. The forfeiture of the licence is *absolute* (*R. v. West Riding JJ.*) (*q*); and this is not one of the offences, entailing forfeiture, after the commission of which a temporary authority to carry on the business can be obtained (*ante*, p. 599).

Licensed Person Harbouring Thieves.

Licensed person harbouring thieves or allowing deposit of stolen goods on his premises.

(*o*) Every *licensed person* (as well as any keeper or occupier of a place of public entertainment or public resort) is guilty of an OFFENCE who *knowingly lodges or knowingly harbours* THIEVES or *reputed thieves*; or knowingly suffers them to meet or assemble on his premises; or knowingly allows the deposit of goods therein, having reasonable cause for believing them to be stolen (Prevention of Crimes Act, 1871, 34 & 35 Vict. c. 112, s. 10).

The defendant is required, under pain of an additional penalty of 5*l.*, to produce his licence for examination.

APPEAL lies to quarter sessions (39 & 40 Vict. c. 20, s. 5).

It would appear that a meeting convened to be held in a public-house for the purpose of procuring subscriptions towards the support of the wife and children of a convict who had been committed for trial, and for the purpose of obtaining means for his defence, would fall within the section if a number of thieves were included in the company assembled at the meeting (cf. *Marshall v. Fox*) (*r*).

Penalty.

PENALTY.—FINE, not exceeding 10*l.*, and, in default of

(*n*) (1863) 33 L. J. M. C. 61; L. & C. 349.

(*o*) (1862) 32 L. J. M. C. 36; L. & C. 263.

(*p*) (1882) 46 J. P. 312, &c.; and see *ante*, p. 346.

(*q*) (1888) 21 Q. B. D. 258; 57 L. J. M. C. 163; 52 J. P. 455; 36 W. R. 258.

(*r*) (1871) L. R. 6 Q. B. 370; 40 L. J. M. C. 142; 24 L. T. 751; 35 J. P. 631; 19 W. R. 1108.

payment, imprisonment, with or without hard labour, according to scale (p. 111).

The court may in addition to or in lieu of the money penalty require the defendant to enter into recognizances, with or without sureties, to keep the peace and be of good behaviour for twelve months. But the defendant must not be required to find surety for a sum beyond 20*l.*, nor can he be imprisoned for more than three months for not finding sureties.

On conviction for a first offence the court *may* order the licence to be forfeited; and, on a second conviction, they *must* direct such forfeiture, and the defendant will be disqualified for two years from holding a licence. Moreover, if there are two convictions within three years in respect of *the same premises*, the court *must* direct that for some term (not exceeding one year) no licence shall be granted in respect of the premises.

Licensed Person Harbours, &c., Constables on Duty.

(p) A *licensed person* commits an OFFENCE if he

(a) *Knowingly harbours* or knowingly suffers to remain on his premises any CONSTABLE during any part of the time appointed for such constable being *on duty*, unless for the purpose of keeping or restoring order, or in execution of his duty; or

(β) *Supplies any liquor* or refreshment, whether by way of gift or sale, to any *constable on duty*, unless by authority of some superior officer of such constable; or

(γ) *Bribes* or attempts to bribe any *constable* (35 & 36 Vict. c. 94, s. 16).

If the licensed person holds an “occasional” licence only, he will, nevertheless, be liable (37 & 38 Vict. c. 49, s. 20).

It has been held that, if a servant of the licensed person *knowingly* serves a constable on duty, the master may be convicted although he personally had no knowledge of the circumstances (*Mullins v. Collins*) (s). The fact that the constable was in uniform has been said to furnish *prima facie* evidence that he was on duty and that

Licensed person harbouring or supplying liquor to constable on duty, or bribing a constable.

(s) (1874) L. R. 9 Q. B. 292; 43 L. J. M. C. 67; 29 L. T. 838; 38 J. P. 84; 22 W. R. 297.

the person supplying him knew that he was on duty. But magistrates, in the metropolis, have declined to convict where the constable was not wearing his duty badge; and the section does not apply if the licensed person *bonâ fide* believes the constable to be *off duty* (*Sherras v. De Rutzen*) (t).

Penalty.

PENALTY.—*First offence*.—FINE, not exceeding 10*l.*, and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111).

Second offence.—FINE, not exceeding 20*l.*, and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111).

Refusing to Quit Licensed Premises.

Drunkards,
&c., refusing
to quit
licensed
premises.

(q) A publican may refuse to admit and may turn out any person who is drunken, violent, quarrelsome, or disorderly, and any person whose presence on the premises would subject him to a penalty under the Licensing Act, 1872 (cf. *e.g.*, OFFENCES (k)—(p), inclusive, *supra*). If such person, upon being requested by the publican, or his agent or servant, or any constable, to *quit* the premises, refuses or fails to do so, he commits an OFFENCE (35 & 36 Vict. c. 94, s. 18). The section applies even though the licence is an “occasional” licence (37 & 38 Vict. c. 49, s. 20). All constables are “required” to assist in the expulsion.

Several defendants should not be included in one information for the offence, though the irregularity, if committed, may be waived (*Wells v. Cheyney*) (u).

Excluding the case of a “traveller” at an “inn” (*ante*, p. 623), a licence-holder may require a person, whose presence he does not desire, to leave the premises (*Sealey v. Tandy*) (x); but, in order to secure a conviction for “refusing to quit,” it must be proved that, *before the defendant was asked to quit*, he was either drunken, violent, quarrelsome, or disorderly. It is not

(t) [1895] 1 Q. B. 918; 59 J. P. 440; 64 L. J. M. C. 218; 72 L. T. 839; 43 W. R. 526.

(u) (1872) 36 J. P. 198.

(x) [1902] 1 K. B. 296; 71 L. J. K. B. 41; 66 J. P. 19; 85 L. T. 459; 50 W. R. 347; 18 T. L. R. 38.

sufficient to show that he was refused liquor as he had been disorderly on former occasions, and on the occasion in question used bad language *after* the landlord had ordered him to quit the premises (*Dallimore v. Tutton*) (y).

Refusing to quit.

PENALTY.—FINE, not exceeding 5*l.*, and, in default of distress, imprisonment, *with or without* hard labour, according to scale (p. 111).

Penalty.

In addition to or in substitution for any other penalty, the court may order the defendant to *enter into a recognizance*, with or without sureties, to be of good behaviour (2 Edw. 7, c. 28, s. 3; cf. *post*, p. 898). As to the Inebriates Acts, see *ante*, p. 608.

Licensed Person not affixing Name, &c., on Premises.

- (r) A *licensed person* is bound to keep his name painted up or fixed on the premises in a conspicuous place, and in such manner as the licensing justices may from time to time direct. The word “licensed” must also be added, and words sufficient to express accurately the business for which the licence has been granted, and whether for “on” or “off” purposes (35 & 36 Vict. c. 94, s. 11; 37 & 38 Vict. c. 49, s. 28). If the licence is a “six-day” or an “early closing” licence, that fact also must be stated (35 & 36 Vict. c. 94, s. 49; 37 & 38 Vict. c. 49, s. 7).

Licensed person not affixing name, &c., on premises.

If the licensed person contravenes any of these regulations, or has on his premises any words or letters importing that he is authorized to sell liquor which he is not in fact authorized to sell, he commits an OFFENCE.

PENALTY.—*First offence*.—FINE, not exceeding 10*l.*, and, in default of distress, imprisonment, *without* hard labour, according to scale (p. 111).

Penalty.

Second offence.—FINE, not exceeding 20*l.*, and, in default of distress, imprisonment, *without* hard labour, according to scale (p. 111).

Licensed Person Selling to Child.

Giving Liquor to Infant.

Exclusion of Children from Bars.

- (s) A *licensed person* commits an OFFENCE if he sells, or allows any person to sell, to a child *apparently*

Licensed person selling spirits to a

(y) (1898) 78 L. T. 469; 62 J. P. 423; 19 Cox, 31.

child
apparently
under 16.
Penalty.

under SIXTEEN years of age, any SPIRITS to be consumed on the premises (35 & 36 Vict. c. 94, s. 7).

PENALTY.—*First offence*.—FINE, not exceeding 1*l.*, and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111).

Second offence.—FINE, not exceeding 2*l.*, and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111).

INTOXI-
CATING
LIQUORS
(SALE TO
CHILDREN)
ACT, 1901.
Form of
Information.
post, p. 1225.

Subject to the exception hereinafter mentioned, any *licence-holder* who *knowingly* sells or delivers (or allows any person to sell or deliver) ANY INTOXICATING LIQUOR to a child *under* FOURTEEN years of age, for consumption by any person on or off the premises, commits an OFFENCE (1 Edw. 7, c. 27, s. 2).

The exception is (a) where the liquor is delivered at the residence or working place of the purchaser, or (3) where the liquor is sold or delivered in a “corked” and “sealed” vessel in a quantity not less than one reputed pint (*i.e.*, presumably one-twelfth part of a gallon) (*ib.*).

But the Act does not prevent a *licensed person* from employing a member of his family or his servant or apprentice as a messenger to deliver intoxicating liquor (s. 3).

“Corked” means closed with a plug or stopper, whether made of cork, wood, glass, or other material. “Sealed” means secured with any substance without the destruction of which the cork, plug, or stopper cannot be withdrawn (s. 5).

Penalty.

PENALTY.—*First offence*.—FINE, not exceeding 2*l.*, and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111).

Second offence.—FINE, not exceeding 5*l.*, recoverable as above.

Sending child
for liquor.

Any person who *knowingly* sends a child under fourteen to *any place* where intoxicating liquor is sold, delivered, or distributed, for the purpose of obtaining it, except under the above conditions, commits a like OFFENCE.

Decisions on
Act of 1901.

Despite the word “*knowingly*,” the *licence-holder* is not protected if he delivers the liquor in a vessel properly “corked” and (as he honestly but mistakenly believes) “sealed” as required by the Act: in other words, the exception is that of “liquors *in fact* delivered in properly corked and sealed vessels and not in vessels *believed*

to be properly corked and sealed" (*Brooks v. Mason*) (z). That is to say, the word "knowingly" applies to the age of the child, but does not apply to the exception.

Where there is no "knowledge" on the part of the licence-holder, and the serving barman honestly believes that the child is over fourteen, there can be no conviction (*Groom v. Grimes*) (a). Nor can a licence-holder, who has not delegated the charge or control of the house or business, be made liable for the act of a servant who, without his knowledge or connivance, sells to a child under fourteen (*Emary v. Nolloth* (b) ; *McKenna v. Harding*) (c).

If the court be satisfied that the stopper could be removed without destroying the label placed over it, as, e.g., by moistening the label with the tongue, the bottle is not "sealed" within the meaning of the Act (*Mitchel v. Crawshaw*) (d). But there must be evidence of this fact before the court to justify a conviction (*Macey v. McKenzie*) (e).

In a recent case it was held that to protect a "sender" there must be evidence that he intended the vessel to be corked and sealed before delivery (per *Alverstone*, C.J.) ; while *Darling*, J., said : "He must not send for less than a reputed pint, and he must not send a child with a bottle which has to be corked and sealed by the seller after being filled." And *A. T. Lawrence*, J., is reported to have expressed an opinion that the child must not be sent for any liquor which is not sold in corked and sealed bottles (*Farndale v. Dillon*) (f).

But, in a later case, *Darling*, J., withdrew this dictum, and it was held that no offence was committed where the bottle was in fact properly corked and sealed before delivery to the child. "I think," said the learned

INTOXI-
CATING
LIQUORS
(SALE TO
CHILDREN)
ACT, 1901—
cont.

(z) [1902] 2 K. B. 743 ; 72 L. J. K. B. 19 ; 88 L. T. 24 ; 67 J. P. 47 ; 51 W. R. 224.

(a) (1903) 89 L. T. 129 ; 67 J. P. 345.

(b) [1903] 2 K. B. 264 ; 72 L. J. K. B. 620 ; 89 L. T. 100 ; 52 W. R. 107 ; 67 J. P. 354 ; 19 T. L. R. 530 ; 20 Cox, 507.

(c) (1905) 69 J. P. 354.

(d) [1903] 1 K. B. 701 ; 72 L. J. K. B. 389 ; 88 L. T. 463 ; 67 J. P. 179 ; 20 Cox, 395.

(e) (1903) 88 L. T. 631 ; 67 J. P. 251.

(f) [1907] 2 K. B. 513 ; 76 L. J. K. B. 922 ; 97 L. T. 284 ; 71 J. P. 374.

judge, "I was mistaken when I adopted the view that the words meant such liquors as are sold in bottles provided by the vendor" (*Jones v. Sherrington*) (g).

**CHILDREN
ACT, 1908.**

Giving liquor
to child under
five years of
age (s. 119).

If any person gives, or causes to be given, to any child under the age of FIVE, any intoxicating liquor (except upon the order of a duly qualified practitioner, or in case of sickness, or apprehended sickness, or other urgent cause), he commits an OFFENCE and becomes liable to a FINE of 3*l.* recoverable as in the case of offence (s), ante, p. 635 (8 Edw. 7, c. 67, s. 119).

"Intoxicating liquor" is defined to mean fermented, distilled, or spirituous liquor which cannot be sold without an Inland Revenue licence (s. 131).

Exclusion of
children from
bars of
licensed
premises
(s. 120).

A licence-holder commits an OFFENCE if he allows a child under FOURTEEN to be in the "bar" of his premises at any time except during the hours of closing (*ib.*, s. 120, (i.), (ii.)).

Form of
Information.
post, p. 1222.

Meaning of
"Bar."

"Bar" here means (a) "any open drinking bar," or (β) any part of the premises exclusively or mainly used for the sale and consumption of intoxicating liquor (*ib.* s. 120, (v.)).

Causing child
to enter, or
be in, Bar.

If any person "causes or procures, or attempts to cause or procure," any such child "to go to, or to be in the bar" except during the hours of closing, he commits a like OFFENCE (*ib.* s. 120, (ii.)).

Exemptions.

The section does not apply in the case of (a) a child of the licence-holder, or (b) a child who is "resident, but not employed in the licensed premises," or (c) a child who is in the bar "solely for the purpose of passing through in order to obtain access to, or egress from, some other part of the premises, not being a bar, where there is no other convenient means of access to, or egress from, that part of the premises," or (d) railway refreshment rooms, or other premises, "constructed, fitted, and intended to be used in good faith for any purpose to which the holding of a licence is merely auxiliary" (*ib.* s. 120 (iv.)).

Presumption
against
licence-
holder.

If a child under fourteen is "found in the bar," except during the hours of closing, the licence-holder is to be "deemed to have committed an offence" unless he shows that (i.) he has used "due diligence" to prevent

the child being admitted to the bar, *or* (ii.) that the child was *apparently* a person over the age of fourteen (*ib.*, s. 120 (iii.)).

Children Act, 1908—*cont.*

As to the presumption and proof of age under the Children Act, 1908, see s. 123 (ii.), cited *ante*, p. 379.

Proof of age.

The PENALTY for a first offence is a FINE not exceeding 2*l.*, and in respect of any subsequent offence not exceeding 5*l.* The fines are recoverable as in the case of offence (s), *ante* p. 635.

Penalty under s. 120.

In s. 120 of the Children Act, 1905, "licence" and "licensed premises" have the same meaning as in the Licensing Acts (see s. 74 of the Act of 1872); but the statutes are not incorporated, so that, on the trial of a charge under s. 119 or s. 120 of the Children Act, the special statutory disqualifications attaching to certain justices under the Licensing Acts (*ante*, p. 603) will not apply, nor is there any right of appeal to quarter sessions against a conviction.

Not Selling by Standard Measure.

(t) If any person (licensed or unlicensed) sells, or suffers any one under his control or in his employment to sell, intoxicating liquor *by retail* (not in cask or bottle, *or* not in a quantity less than half a pint), he commits an OFFENCE unless it is sold in a MEASURE *marked according to the* IMPERIAL STANDARDS (35 & 36 Vict. c. 94, s. 8).

Selling by retail otherwise than by standard measure.

If the customer demand *measure* (say a pint) the landlord must not pretend to measure the liquor in anything but a legally stamped measure. So, too, if the customer ask for a quantity known by a local name, and such quantity exceeds half a pint, though the quantity is not a usual measure of imperial capacity, the section would apply (*Payne v. Thomas*) (*h*). But, if a "glass" is asked for, or a quantity undetermined by measure or custom, which, *primâ facie*, does not imply the demand of any exact amount of imperial measure, there seems to be no reason why the landlord should not offer a tumblerful as a visible quantity (*less than half a pint*) at his own price. If the liquor is not handed to the purchaser in a stamped measure, he should see the liquor in the

(*h*) (1890) 60 L. J. M. C. 3 ; 63 L. T. 456 ; 54 J. P. 824 ; 39 W. R. 240.

measure before it is poured into the jug or other vessel for his consumption (*Addy v. Blake*) (i). This case was distinguished in *Pennington v. Pincock* (k), a decision as to what is known as the "long pull." There the holder of an "off" licence, being asked for a pint of beer, twice filled a marked half-pint measure, in the presence of the customer, and poured the contents into the customer's jug, adding a further quantity of beer from the tap. The judgments in *Addy v. Blake* were based, said *Alverstone*, C.J., "on the fact that the customer *did not see the beer drawn* and never saw it while it was in the measure, and *there was no sale until the jug was handed over to the purchaser*." "As to the giving of the *long pull*," added the learned judge, "I am not aware of any enactment which makes it an offence. If the Act had been complied with as to the sale of beer by a marked measure, as, in my opinion, it had been, the subsequent addition of more beer is not an offence under s. 8."

The "long pull."

Penalty.

PENALTY.—*First offence*.—FINE, not exceeding 10*l.*, and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111).

Second offence.—FINE, not exceeding 20*l.*, and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111).

The court may also direct forfeiture of the illegal measure.

And see WEIGHTS AND MEASURES, *post*, pp. 935, 938.

Making Communication with Licensed Premises.

Making internal communication between licensed premises and a place of public resort.

- (u) Every person (whether licensed or unlicensed) commits an OFFENCE if he makes or uses, or allows to be made or used, any *internal communication* between any *licensed premises* and any unlicensed premises which are used for *public entertainment or resort*, or as a *refreshment house* (35 & 36 Vict. c. 94, s. 9).

As to the meaning of "refreshment house," see p. 586.

(i) (1887) 19 Q. B. D. 478; 56 L. T. 711; 51 J. P. 599; 35 W. R. 719.

(k) [1908] 2 K. B. 244; 77 L. J. K. B. 537; 98 L. T. 804; 72 J. P. 199; 6 L. G. R. 830; 21 Cox, 609; 24 T. L. R. 509.

PENALTY.—FINE, not exceeding 10*l.*, for every day during which the communication remains open; and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111). Penalty.

If the defendant is a licence-holder, the licence is FORFEITED on conviction. As to application for a temporary authority to carry on the business, *ante*, p. 600. And as to *alterations* see now 2 Edw. 7, c. 28, s. 11 (ii.), *ante*, p. 582.

Licensed Person in Possession of Liquors not Within his Licence.

- (v) If a *licensed person* has in his possession on his premises any description of intoxicating liquor which he is *not authorized to sell*, he commits an OFFENCE, unless he can account for the possession of the same to the satisfaction of the court (35 & 36 Vict. c. 94, s. 10). Licensed person storing liquor which he is not authorized to sell.

As to the power to search for intoxicating liquors, see *ante*, p. 612.

PENALTY.—*First offence*.—FINE, not exceeding 10*l.*, and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111). Penalty.

Second offence.—FINE, not exceeding 20*l.*, and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111).

On conviction the liquor and the vessels containing it are *forfeited*, but the defendant must have an opportunity of offering an explanation before forfeiture is ordered (*Gill v. Bright*) (l).

Refusing to Admit Constable.

- (w) A *constable* may, for the purpose of preventing or detecting the violation of any of the provisions of the Licensing Acts of 1872 and 1874, which it is his duty to enforce, enter at any time on the licensed premises, whether the licence in force is an ordinary or an "occasional" licence. And *any person* who, by himself, or by any person in his employ, or acting by his direction, or with his consent, *refuses or fails* Refusing to permit constable to enter licensed premises.

(l) (1872) 41 L. J. M. C. 22; 25 L. T. 591; 36 J. P. 198.

Refusing
to admit
constable—
contd.

to admit such constable, after a demand to enter, commits an OFFENCE (37 & 38 Vict. c. 49, s. 16). A constable may not, however, exercise this power of entry unless he has reasonable grounds for suspecting that circumstances exist, or are about to exist, constituting a violation of some provision of the Acts (*Duncan v. Dowding*) (m).

This section applies only to premises in respect of which there is a licence granted by *justices* as distinguished from a mere *excise* licence (*Harrison v. McMeel*) (n). As to the liability of a licence-holder for a refusal by another person, see *Caswell v. Hundred House JJ.* (o).

Penalty.

PENALTY.—*First offence*.—FINE, not exceeding 5*l.*, and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 103).

Second offence.—FINE, not exceeding 10*l.*, and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111).

Being on Premises on Seizure of Illicit Stores.

Person found
on premises
after seizure
of liquor by
constable.

(x) We have seen that a search warrant may be issued for the purpose of detecting the commission of offences under the Licensing Acts (*ante*, p. 612), and it is provided that if, after the seizure and removal of liquor, any person is found at the time on the premises he shall, *until the contrary is proved*, be deemed to have been on such premises for the purpose of *illegally dealing* in intoxicating liquor, and be liable to a PENALTY (37 & 38 Vict. c. 49, s. 17).

The person so found ought to be convicted if he were on the premises for the purpose of buying and drinking on the spot the liquor illicitly stored there, although he was not “dealing” in the liquor within the ordinary meaning of that word (*Mackenzie v. Day*) (p).

Penalty.

PENALTY.—FINE not exceeding 2*l.*, and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111).

(m) [1897] 1 Q. B. 575; 66 L. J. Q. B. 362; 76 L. T. 294; 45 W. R. 383; 61 J. P. 280; 45 W. R. 383; 13 T. L. R. 290; 18 Cox, 527.

(n) (1884) 50 L. T. 210; 48 J. P. 469.

(o) (1890) 54 J. P. 87.

(p) [1893] 1 Q. B. 289; 62 L. J. M. C. 49; 68 L. T. 345; 57 J. P. 216; 41 W. R. 384.

In case of a refusal on the part of the person so "found" to give his name and address, he may be apprehended and fined as in respect of OFFENCE (i), *ante*, p. 623.

Offences Relating to Refreshment Houses.

(y) We have seen that certain "refreshment houses" require an *excise* licence, but not a *justices'* licence, unless it is intended to SELL intoxicating liquors (p. 586). But if the holder of such an excise licence allows any *intoxicating liquor* to be CONSUMED on such premises *during the hours in which they would be closed if they were the licensed premises of a licensed victualler*, he commits an OFFENCE (35 & 36 Vict. c. 94, s. 27).

Offences by
keepers of
refreshment
houses.

So, too, certain "refreshment houses" hold *foreign wine licences*, and, under 24 & 25 Vict. c. 91, s. 9, are required to be closed every night at 10 P.M. (p. 587). If the licensed person allows any *intoxicating liquor* to be sold, exposed for sale, or consumed on such premises *after that hour*, or opens or keeps open the house after that hour for the sale of intoxicating liquor, he commits a like OFFENCE (35 & 36 Vict. c. 94, s. 28).

PENALTY.—*First offence*.—FINE, not exceeding 10*l.*, and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111). Penalty.

Second offence.—FINE, not exceeding 20*l.*, and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111).

Moreover, a "refreshment house," with the excise licence only, must NOT BE OPEN between the *closing time* at night (applicable to premises licensed for the sale of intoxicating liquors by retail situate in the same place) and 4 A.M. under a PENALTY of 5*l.* (27 & 28 Vict. c. 64, s. 5; 37 & 38 Vict. c. 49, s. 11). An attempt was made under these sections to close a "refreshment house" in Wales between 5 P.M. and 6 P.M. on Sunday; but the attempt failed, as the restrictions do not apply to the hours of the *daytime*, and the Sunday Closing Act (Wales) applies only to premises licensed *under the Licensing Acts* (*Parker v. Harris*) (*pp*). Moreover, the

Closing hour.

Suffering
gaming, &c.

(*pp*) (1909) 100 L. T. 408; 73 J. P. 183.

Refreshment
houses
—*contd.*

licensee of a "refreshment house" must not suffer unlawful games or gaming, or the assembling of prostitutes, thieves, &c., under a PENALTY of 2*l.* (23 Vict. c. 27, s. 32). The penalty of 2*l.* is largely increased in the case of second and subsequent offences; and a right of appeal to quarter sessions is then given (*ib.* s. 34).

Refusing to
quit.

Any person who is drunk, riotous, quarrelsome, or disorderly, and refuses to quit the house, is liable to a PENALTY of 2*l.* (*ib.* s. 41). This is one of the offences dealt with under the Inebriates Acts (*ante*, p. 608), and the court may either in addition to, or in substitution for, any other penalty require a recognizance with or without sureties (2 Edw. 7, c. 28, s. 3).

Canteens.

A person holding a naval or military canteen, with an excise licence, need no longer obtain a justices' licence or certificate (2 Edw. 7, c. 28, s. 23). Some arrangements for the supply of liquor in canteens involve registration as *clubs*, see *ante*, p. 601; and see p. 616.

"Grogging" Casks.

Grogging
casks.

It is an OFFENCE, rendering the offender liable to an *excise* penalty of 50*l.*, to subject a cask to any process for the purpose of *extracting any spirits* absorbed in the wood; or to have on one's premises a cask subjected to such a process or any spirits so extracted. The extracted spirits are to be deemed "unlawfully kept," and, therefore, become liable to seizure under a search warrant (Finance Act, 1898 (61 & 62 Vict. c. 10), s. 4). The possession of casks is not an offence where the spirit has exuded naturally and there has been no rinsing or other extracting process applied (*Robinson v. Dixon*) (*q*).

LANDLORD AND TENANT.

Recovery of Possession.

Ejectment
where rent
does not ex-
ceed 20*l.*

Where the tenancy of premises held at will or for not more than seven years, either rent-free or at a rent *not exceeding* 20*l.* (without a fine having been reserved), is terminated by notice to quit or otherwise, and the tenant or other person in occupation refuses to quit, the land-

(*q*) [1903] 2 K. B. 701; 72 L. J. K. B. 367; 89 L. T. 132; 67 J. P. 386; 50 W. R. 8; 20 Cox, 522.

lord, or his agent, may serve such tenant or occupier with a *signed notice* (in the form prescribed by the Act) of his intention to apply, at the expiration of *seven clear days*, to the justices to recover possession (1 & 2 Viet c. 74, s. 1). The notice may be signed by the landlord or by the person usually employed to let the premises, or to collect the rent, or by some person specially authorized in writing by the landlord. Should the tenant fail to appear and show reasonable cause to the contrary, the justices, on proof of the holding and of the determination of the tenancy (and of the landlord's title in case it accrued subsequently to the date of letting), and on proof of the service of the statutory notice, may *issue their warrant for giving possession*, by force if necessary, within a time therein mentioned, such time to be not less than twenty-one nor more than thirty clear days from the date of the warrant. The statute is curiously phrased, but it is generally thought advisable not to authorize the taking of possession until the *expiration* of twenty-one days. And, indeed, where a magistrate made an order for a warrant to issue but suspended it for ten days, with an intimation that if the tenant did not go out within that time the warrant would issue, it was held that such an order was invalid (*R. v. Hopkins*)(r).

Justices' warrant for possession.

It is, too, generally considered that there is *no power to award costs*, inasmuch as the warrant for possession can hardly be said to be an "order" within s. 18 of Jervis's Act (see Appendix, *post*, p. 1008)

The seven days' *notice of intention to apply to the justices for a warrant* must be served personally on the tenant or occupier who holds over (*or left with some person who is in, and is apparently residing at, his place of abode*), *and it must be read over to the person served or with whom it is left, and explained to him*. If, however, personal service be impracticable, the notice may be posted on the premises (s. 2).

Service of notice of application.

There is, moreover, provision for staying the execution of the warrant on the tenant finding sureties and giving security to prosecute an action of trespass (s. 3).

Where there was an agreement to pay a fixed annual rent, a clause providing for "three months' notice on quit."

Notice to quit.

either side to terminate the agreement " was held not to make the tenancy otherwise than a yearly tenancy, so that a notice to quit must expire on the anniversary of the date of the commencement of the tenancy (*Dixon v. Bradford and District, &c., Co.*) (s). And as to notice to quit " at end of current year's tenancy," &c., see the conflicting decisions discussed in *Wride v. Dyer* (t).

Statute
applies only
as between
landlord and
tenant.

The statute, although extending to premises held rent-free, only applies to cases strictly between landlord and tenant. It does not, *e.g.*, apply to an occupier under the trusts of a charity; nor in the case of a man who occupies premises as a servant, or by virtue of his office. But it would apply if a workman voluntarily occupied a cottage and the amount of the rent were deducted from his wages (cf. *Smith v. Overseers of Seghill*) (u).

Inasmuch as the proceedings are of a purely civil character, the defendant is, of course, a *compellable* witness; and documents must not be admitted in evidence unless duly stamped, or unless the penalty be paid as required by the Stamp Acts.

As to *parish* houses or lands, see 59 Geo. 3, c. 12, s. 24.

Small
Dwellings
Acquisition
Act, 1899.

Where, under the Small Dwellings Acquisition Act, 1899 (62 & 63 Vict. c. 44), a local authority is entitled to take possession of a house (whatever may be its value), the authority may obtain an order for possession from a court of summary jurisdiction as in cases of ejectment (s. 5 (v.)).

Recovering
possession of
deserted
premises.

Where premises held at a rack-rent, or at not less than three-fourths of their yearly value, are *deserted and left uncultivated or unoccupied*, so that no sufficient distress can be had for rent in arrear for half a year or more, *two justices* may, at the request of the landlord, proceed to view the same, and affix a notice stating upon what day (after an interval of not less than a clear fortnight) they will return for a second view. If upon such second view the tenant does not appear and pay the rent, or there be no sufficient distress available, the justices may *put the landlord into possession*, and the tenant's lease

(s) [1904] 1 K. B. 444; 73 L. J. K. B. 136; 20 T. L. R. 159.

(t) [1900] 1 Q. B. 23; 69 L. J. Q. B. 17; 64 J. P. 118.

(u) (1875) L. R. 10 Q. B. 442; 44 L. J. M. C. 152; 32 L. T. 859.

will thenceforth be void (11 Geo. 2, c. 19, s. 16; 57 Geo. 3, c. 52).

Law of Distress Amendment Act, 1908

(8 Edw. 7, c. 53).

There is, too, special provision as to the *seizure of an under-tenant or lodger's goods under distress for rent owing by a tenant to the superior landlord, under whom such immediate tenant holds.*

The Act applies where the superior landlord authorizes the levy of a distress upon the chattels of (a) any *under-tenant* liable to pay by equal instalments (not less often than every actual or customary quarter of a year) a rent "which would return in any whole year *the full annual value* of the premises, or of such part thereof as is comprised in the under-tenancy"; or (β) any *lodger*; or (γ) any *other person* "not being a tenant of the premises or of any part thereof, and *not having any beneficial interest in any tenancy* of the premises or of any part thereof."

Application of the Act.

In such a case, the superior landlord, or the bailiff or agent employed by him to levy, may be served with a *declaration in writing*, made by the under-tenant, &c., setting forth that (i.) the landlord's immediate tenant has "no right of property or beneficial interest" in the chattels sought to be distrained, (ii.) the chattels are *the property or in the lawful possession of* such under-tenant, &c., and (iii.) the chattels are not goods or live stock excluded from the operation of the Act (*vide infra*, p. 648).

Mode of procedure. The "declaration."

A *correct inventory* of the chattels referred to (subscribed by the under-tenant, lodger, or other person) must be annexed to the declaration; and, in case of an *under-tenant or lodger*, the declaration must also set forth the *amount of rent* (if any) *due from him* (and the times at which future instalments will become due and the amount thereof), and must contain an *undertaking* to pay to the superior landlord any rent so due or to become due until the arrears of rent to which the distress relates have been paid off (s. 1).

"Inventory."

"Under-taking to pay rent."

If the superior landlord, or his agent, proceeds with the distress, notwithstanding service of the declaration and inventory (and, in case of an under-tenant or lodger, the giving of the undertaking and payment or tender

"Order for restoration."

of his rent), he is *guilty of an illegal distress*; and the under-tenant, lodger, or other person aforesaid may apply to a stipendiary magistrate (or to two justices if there be no stipendiary), for an ORDER for the *restoration* of the goods (s. 2). The magistrate, or justices, must “inquire into the truth of such declaration and inventory, and shall make such ORDER for the *recovery of the goods or otherwise* as to him or them may seem just” (*ib.*).

False
declaration or
inventory.

If the under-tenant, lodger, or “other person aforesaid,” makes or subscribes a *declaration and inventory*, knowing the same or either of them to be *untrue in any material particular*, he is guilty of a *misdemeanour*, punishable on indictment (s. 1).

Exclusion of
certain under-
tenants.

The Act does not apply to an *under-tenant* where the under-tenancy has been created *in breach of any covenant or agreement* in writing between the landlord and his immediate tenant, or where the under-tenancy has been created under a lease existing on December 21, 1908, contrary to the wish of the landlord, expressed in writing and delivered at the premises “within a reasonable time after the circumstances have come, or with due diligence would have come, to his knowledge” (s. 5).

Exclusion of
certain
goods.

The Act does not apply (i.) to goods belonging to *the husband or wife* of the tenant whose rent is in arrear; nor (ii.) to goods comprised in a *bill of sale, hire purchase agreement, or settlement* made by such tenant; nor (iii.) to goods in his “possession, order, or disposition” by the consent and permission of the true owner, under such circumstances that the tenant is the “reputed owner thereof”; nor (iv.) to live stock to which s. 29 of the Agricultural Holdings Act, 1900, applies (s. 4 (i.)).

Cf. *Bank-
ruptcy Act*,
1883, s. 44
(iii.).

By a *second sub-section* of the section last cited, *certain other goods* are excluded from the operation of the Act, and it is “competent for a *stipendiary magistrate*, or where there is no stipendiary magistrate for *two justices*, upon application by the superior landlord or any under-tenant or other such person as aforesaid, upon hearing the parties to *determine whether any goods are in fact goods covered*” by the sub-section. The goods excluded by this sub-section are (α) the goods of a partner of the immediate tenant; (β) “goods (not being goods of a lodger) upon premises where any trade or business is carried on in which both the immediate tenant and the

under-tenant have an interest"; (γ) "goods (not being goods of a lodger) on premises used as offices or warehouses where the owner of the goods neglects for one calendar month after notice (which shall be given in like manner as a notice to quit) to remove the goods and vacate the premises"; (δ) "goods belonging to and in the offices of any company or corporation on premises, the immediate tenant whereof is a director or officer, or in the employment of such company or corporation" (s. 4 (ii.)).

Exclusion of
certain goods
—*contd.*

Under the repealed Lodger's Goods Protection Act, 1871, it was held that the inventory was sufficiently "subscribed" by the lodger if it was referred to in the declaration to which it was annexed *and the declaration was signed by the lodger* (*Godlonton v. Fulham, &c., Property Co.*) (z). And further that, if the distress be withdrawn, the lodger must make a fresh declaration, &c., in case of a subsequent levy by the landlord (*Thwaites v. Wilding*) (e).

Removal to Avoid Distress.

If a tenant or lessee *fraudulently or clandestinely* carry off the premises his goods and chattels for the purpose of preventing the landlord from distraining for *rent then due*, the landlord may *within thirty days* (after calling to his aid a constable) enter, in the daytime, the premises where the goods lie and seize them, unless they have been sold in good faith to an innocent third party. But if the goods have been placed in a *dwelling-house*, it cannot be forcibly entered until *oath* has been made before a *justice* that there is reasonable cause to suppose that the goods are therein (11 Geo. 2, c. 19, ss. 1, 2, 7).

Fraudulent
removal to
elude distress.

If the *value* of the goods does not exceed 50*l.*, the landlord or his agent may, after complaint *in writing* before two justices for the place whence the goods were removed or to which they have been conveyed, obtain by summons an *ORDER* for *double the value* of any goods so fraudulently removed. This order may be made not only against the tenant or lessee, but also against any person who wilfully and knowingly aids in the fraudulent removal (*ib.* s. 4).

Summary
proceedings
where value
does not ex-
ceed 50*l.*

(z) [1905] 1 K. B. 431; 74 L. J. K. B. 242; 92 L. T. 362.

(e) (1883) 12 Q. B. D. 4; 53 L. J. Q. B. 1; 49 L. T. 396; 48 J. P. 101.

P. 1008.

Enforcement
of order.

Costs may be awarded (11 & 12 Viet. c. 43, s. 18).

The person or persons against whom the order is made must be *served with notice* of it, and, in the event of non-payment, the order is then enforceable by *distress*, and, in default of distress, imprisonment, with or without hard labour, according to scale (p. 111). Appeal lies to the quarter sessions against the order (11 Geo. 2, c. 19, s. 5).

Although the order is made on *complaint*, the proceedings are of a penal nature, and it seems doubtful whether the sum ordered to be paid is a *civil debt* (*ante*, p. 118), so as to make the defendant a *compellable* witness.

When the Act
applies.

It will be observed that the rent must be *due or in arrear* when the fraudulent removal takes place, otherwise the statute will not apply; but, as the rent if "due" need not be "in arrear," the removal may fall within the statute although it takes place on the rent day, when distress could not be levied. Observe, however, that the statute (s. 1) allows the *seizure* of goods fraudulently removed, *only where the goods could have been distrained if they had remained upon the demised premises*. In other words, both the removal of the goods by the tenant and the seizure by the landlord must take place during the continuance of the tenant's interest in the demised premises, *i.e.*, either during the term itself, or during such period after the expiration of the tenancy as the tenant remains in actual exclusive possession (*cf. Gray v. Stait*) (*f*).

The mere fact of removing goods (not leaving enough to satisfy a distress) without paying the rent, though not in itself conclusive, is some evidence of fraud; but the fact that the object of the removal was to avoid distress is not necessarily sufficient, as the tenant may show that he entertained a *bonâ fide* belief that his landlord had *no right* to distrain (Foà's L. & T., 3rd ed. p. 473).

The Act does not apply to the goods of a stranger or a lodger, but merely to the goods of the *tenant or lessee himself*, so that it does not apply, *e.g.*, to goods covered by a bill of sale granted by the tenant (*Tomlinson*

(*f*) (1883) 11 Q. B. D. 668; 52 L. J. Q. B. 412; 49 L. T. 288; 31 W. R. 662.

v. *Consolidated Credit, &c., Corporation*) (*g*). Justices may, therefore, inquire into the question of title to the goods (cf. *ante*, p. 92).

Law of Distress Amendment Act, 1895.

A court of *summary jurisdiction*, on complaint that goods exempt from distress under s. 4 of the Law of Distress Amendment Act, 1888 (*i.e.*, the wearing apparel and bedding of the tenant and his family, and the tools and implements of his trade, to the value of 5*l.*), have been taken under such distress, may ORDER the goods so taken to be restored; or, if the goods have been sold, may order the value as fixed by the court to be paid to the complainant by the person who levied or directed the levy (58 & 59 Vict. c. 24, s. 4). It must, however, be noted that such goods are not protected from seizure where (*a*) the lease, term or interest of the tenant has expired, (*β*) possession has been demanded, and (*γ*) the distress is made not earlier than seven days after such demand.

Seizing goods
exempt from
distress.

58 & 59 Vict.
c. 24.

The "bedding" privileged from distress under the Act of 1888 includes a *bedstead* used by the tenant as part of his sleeping accommodation (*Davis v. Harris*) (*h*). It has been held, too, that a four-wheeled cab used by a cab-driver for the purpose of his trade is within the exemption; and this was so although the cab was of greater value than 5*l.*, *it being the only chattel on the premises* (*Lavell v. Ritchings*) (*i*). But a sample typewriter, entrusted to a commercial traveller to be shown to intending purchasers for the purpose of demonstrating its utility, is not protected (*Addison v. Shepherd*) (*j*). It has been held by Channell, J., that the protection afforded by the statute is limited to wearing apparel, bedding, tools and implements of trade of *the aggregate value of 5l.* (*Boyd, Ltd. v. Bilham*) (*jj*).

(*g*) (1889) 24 Q. B. D. 135; 62 L. T. 162; 38 W. R. 118.

(*h*) [1900] 1 Q. B. 729; 69 L. J. Q. B. 232; 81 L. T. 780; 48 W. R. 445.

(*i*) [1906] 1 K. B. 480; 75 L. J. K. B. 287; 94 L. T. 515; 54 W. R. 394; 22 T. L. R. 316.

(*j*) [1908] 2 K. B. 118; 77 L. J. K. B. 534; 99 L. T. 121; 72 J. P. 239.

(*jj*) Cited *ante*, p. 109.

As to the enforcement of the order, see *ante*, p. 120.

Levy by un-
certificated
person.

If any person, who does not hold a certificate under the Act of 1888, levies a distress contrary to the provisions of that Act, he is liable on *summary conviction* to a PENALTY of 10*l.* recoverable by distress, and, in default, imprisonment, without hard labour, according to scale; *ante*, p. 111 (58 & 59 Vict. c. 24, s. 2).

Bailiffs'
charges.

The costs of distresses are provided for by 57 Geo. 3, c. 93, and the Distress for Rent Rules, 1888, made under 51 & 52 Vict. 21, c. s. 8. The Act first cited (which is still unrepealed), by way of PENALTY for excessive charges or charges for work not really done, provides for the recovery *before a justice* of treble the amount with full costs. Unless by express agreement with the tenant, no charge may be made for "man in possession" where the possession is *constructive* merely and not actual (*Lumsden v. Burnett*) (*k*). But as to the expression "man in possession" extending to possession elsewhere than on the premises, see the observations of *Alverstone*, C.J., in *Scott v. Denton* (*l*). It has, too, been held by *Alverstone*, C.J., and *Ridley*, J. (*Darling*, J., *diss.*), that an agreement between a landlord and the bailiff, whereby the latter could claim a commission over and above the statutory costs, was not unlawful (*Robson v. Biggar*) (*m*).

As to an irregularity or excess in respect of a distress in the *metropolis*, see 2 & 3 Vict. c. 71, s. 39.

Agricultural
Holdings Act.

As to the power of a court of summary jurisdiction to determine, under the Agricultural Holdings Act, disputes as to the levying of a distress, see 8 Edw. 7, c. 28, s. 30.

LARCENY.

There must
be an inten-
tion to
deprive the
owner per-
manently of
his property.

Larceny may be defined as the felonious taking and carrying away of the personal goods of another. The taking must be with the intention of depriving the owner *permanently* of his property, and it must, of

(*k*) [1898] 2 Q. B. 177; 67 L. J. Q. B. 661; 78 L. T. 778; 46 W. R. 664.

(*l*) [1907] 1 K. B. 456; 76 L. J. K. B. 330; 71 J. P. 66.

(*m*) [1907] 1 K. B. 690; 76 L. J. K. B. 248; 71 J. P. 164.

course, be without his consent. It is not theft to take property with the intention of using it for a *temporary* purpose. Temporary taking not theft.

Thus, the *pawning* of the goods of another without authority may amount to larceny; but not if the tribunal adjudicating upon the charge comes to the conclusion that the act was not intended to deprive, and would not have deprived, the owner *permanently* of the possession of his property. There must, however, be not only the intent, but also an apparent ability, to redeem the goods in order to afford protection to the accused; and the fact that he has frequently pawned, and afterwards redeemed, portions of the same property has been held, in itself, insufficient to protect him (*R. v. Medland*) (n). In other words, the act of pawning someone else's property is in most cases equivalent to an assumption of the entire dominion over it (*R. v. Wynn*) (o); but if there be evidence of an intention, coupled with ability, to redeem the pledge, the offence is not larceny, but unlawful pawning (see *post*, p. 757).

It is, however, by no means essential that the thief should intend to retain the property in his own possession, or act with a view to his own profit or benefit; it is sufficient if the *owner is deprived* of his goods, as where the prisoner took a horse and backed it down a coal-pit with a view to prevent its being identified in connection with pending legal proceedings.

The taking must be actuated by some criminal motive, though it is not possible to give a general definition of *animus furandi*. A motive may be highly improper and yet clearly not felonious. Thus, in one case, an inspector under the Food and Drugs Acts, having purchased and paid for a tin of coffee, declared his intention to have it analysed by the public analyst, whereupon the shopkeeper offered to give back the purchase-money and demanded the return of the tin of coffee. The inspector, as he was perfectly entitled to do, refused to adopt this course, and the shopkeeper at once retook possession of the coffee by force. The court, however, quashed a conviction for larceny, although it was contended that the Motive must be felonious.

(n) (1851) 5 Cox, 292.

(o) (1887) 56 L. T. 749; 52 J. P. 55; 16 Cox, 231.

motive of the defendant was improper, and that his conduct was unlawful (*Hewson v. Gamble*) (p). [See now OFFENCE (p), ante, p. 238.]

Felonious
intent must
exist AT TIME
OF TAKING.

Moreover, the criminal design must exist *at the time when the property is taken*, unless indeed the original taking amounted to a *trespass*. Thus, if a man finds a purse of gold in the highway and picks it up without any intention of appropriating it, he would not be guilty of larceny, although he were *afterwards* to form a dishonest resolve to retain it without inquiry. If, however, when he picked it up, knowing who the owner was, or *having reasonable cause to believe that the owner could be discovered*, he, nevertheless, determined to appropriate it, that would be theft.

Unless the
original tak-
ing was a
TRESPASS ;

But if the original taking amounted to a *trespass*, a subsequent conversion of the article with a felonious intent might constitute the offence of larceny ; as where a man unwittingly drove away another man's lamb with his own flock, and afterwards discovering his mistake, deliberately sold it with his own lambs. The accused was held to have been properly convicted, on the ground that the original taking was a trespass for which an action of trespass would have lain, and that the continuing trespass became *felonious* when he, knowing that the lamb did not belong to him, sold it (*R. v. Riley*) (q).

or unless
there is a
BAILMENT ;

Although it is well established that, at the common law, "an *innocent receipt* of a chattel, and its subsequent fraudulent appropriation, do not constitute larceny" (*R. v. Flowers*) (r), nevertheless the "bailee," or temporary holder of specific property, whether chattel, money, or valuable security, which has been lent or entrusted to him by another, but which he is bound to return or deliver *in specie*, is now guilty of *larceny under the statute* if he fraudulently convert it or appropriate it to his own use, or to that of any person other than the owner or the proper consignee (24 & 25 Vict. c. 96, s. 3). The conversion or appropriation is the criminal act to which penal responsibility at once attaches ; but the

(p) (1892) 56 J. P. 534.

(q) (1853) Dears. 149.

(r) (1886) 16 Q. B. D. 643 ; 55 L. J. M. C. 179 ; 54 L. T. 547 ; 50 J. P. 648.

defendant must be under obligation to return the property *in specie*, so that if a man were asked to obtain change for a five-pound note and made off with the sovereigns received by him as change, he could not be convicted under the section last cited as a "bailee." It is possible, however, that a conviction might be sustained if the man had been sent to deliver the note to a particular person, and to obtain the change from him, because in that case the note would have continued a specific bailment until so delivered, while the change would be equally so when obtained. And, similarly, if the man were sent to purchase specified goods with the five-pound note and then made away with the goods, he might be indicted for stealing them; indeed, in one case, where a man was employed to sell a horse at a fair, and was required to hand over the proceeds of the sale to the owner's wife, but instead of doing so absconded with the money, the majority of the court held that the man was properly convicted, although it was not clear that he was bound to pay over the *specific coins* received by him from the purchaser (*R. v. De Banks*) (s). So, too, the fraudulent appropriation of money, raised on a bond by a bailee authorized to effect a loan thereon for the benefit of the bailor, has been held to be larceny (*R. v. Gov. of Holloway Prison*) (t). It may be added that where a minor misappropriated furniture which he had obtained on the hire and purchase system, it was held that he could be convicted as a "bailee," although, of course, the contract under which he held the furniture was of no validity by reason of his infancy (*R. v. McDonald*) (u).

Again, a servant may be convicted of stealing his master's goods although he may not have had any felonious intent at the time when the goods first came into his custody or charge. It is a specific statutory felony, punishable with greater severity than the offence of simple larceny, for anyone who is employed in the capacity of a clerk or servant to steal any chattel, money, or valuable security belonging to or in the possession or power of his master or employer (*post*, p. 665). And as

or unless the property is appropriated BY A SERVANT;

(s) (1884) 13 Q. B. D. 29; 53 L. J. M. C. 132; 48 J. P. 470.

(t) (1898) 77 L. T. 247; 67 L. J. Q. B. 830; 18 Cox, 631.

(u) (1885) 15 Q. B. D. 323; 52 L. T. 583.

to the distinction between this offence and embezzlement, see *ante*, p. 438.

or by a JOINT
OWNER.

And now, a member of any co-partnership, or one of two or more beneficial owners of money, goods, securities, or other property, who *steals or embezzles* any part of the joint property, is liable to be dealt with, tried and convicted, as though he had not been a joint owner (31 & 32 Vict. c. 116).

A Christian Young Men's Society is not a "co-partnership" within the Act, which relates to associations formed for gain (see *R. v. Robson* (*x*); and *R. v. Tankard* (*y*)); but the members of such a society may nevertheless be joint *beneficial owners*.

Taking must
be without
the consent of
the owner
unless con-
sent be
obtained BY
TRICK or
FRAUD;

We have seen that in order to constitute larceny the taking must be *without the consent of the owner of the goods*; but, if the owner were induced to allow an article to pass out of his own possession by means of some trick, threat, or fraud, he would not then be deemed to have consented to the taking; and if the recipient, when he took the article into his possession, intended to steal it, that would be larceny (see *ante*, p. 465). As an instance of such a theft we may refer to the well-known "confidence trick," or to fraudulent misappropriation by "welching" on a race-course (cf. *R. v. Buckmaster* (*z*)). In one case the prisoner fraudulently undertook to sell a horse for 8*l.* down and 15*l.* on delivery. Having secured the 8*l.*, he failed to deliver the horse, and was held properly convicted of stealing that sum (*R. v. Russett*) (*a*). So, too, where a knife-grinder demanded the exorbitant fee of 5*s.* 6*d.* from a woman for sharpening six knives, and obtained payment by dint of strong language, he was held by five judges to be guilty of larceny (*R. v. Lovell*) (*b*). Or, again, where a woman was compelled to pay for goods at a mock auction on the

(*x*) (1886) 16 Q. B. D. 137; 55 L. J. M. C. 55; 50 L. T. 823; 50 J. P. 488.

(*y*) *Ante*, p. 439.

(*z*) (1888) 20 Q. B. D. 182; 57 L. J. M. C. 25; 57 L. T. 720; 52 J. P. 358.

(*a*) [1892] 2 Q. B. 312; 17 Cox, 534; 40 W. R. 592; 56 J. P. 743.

(*b*) (1882) 8 Q. B. D. 185; 50 L. J. M. C. 91; 44 L. T. 319; 45 J. P. 407.

fraudulent pretence that she had bid for them (*R. v. Magrath*) (c).

And if a chattel is handed to a man by its owner under a *mistake*, of which the former is aware *at the time when he receives the chattel*, its appropriation might amount to larceny; as, *e.g.*, where a cabman is paid by his fare a sovereign under the impression that it is a shilling, and the cabman, seeing that it is a sovereign, deliberately takes advantage of the mistake. The case of *R. v. Ashwell* (d), in which the court was equally divided, would seem to suggest that possibly the cabman might be held guilty of theft even if he did not discover the mistake until after the receipt of the sovereign; but it is submitted that this is not the true view of the law (cf. *R. v. Hehir*) (e).

There must not only be a felonious *taking* but also a "carrying away." The bare removal of the object from its place is, however, sufficient to establish *asportavit*. Thus, if a thief, intent upon stealing silver plate, were to take it from the plate chest and place it on the floor, the offence would be complete, although the offender were disturbed or seized before he could get away with the plunder. So, too, moving a parcel from one part of the counter of a shop to another part would be a sufficient "carrying away"; but not if the parcel had been fastened by a long string to the counter, because, to complete the *asportavit*, the subject-matter of the crime must have been, momentarily at least, in the entire and absolute possession of the person charged. If, however, the carrying away were incomplete, the accused might, of course, be convicted of an ATTEMPT to commit larceny.

To complete the offence of larceny, the taking and carrying away must be, as we have said, of the "personal" goods of another. At the common law nothing could be the subject of larceny which was *attached to or savoured of the realty*. Thus, plants and trees, and even lead upon the house-tops, were held to be part of the

or unless advantage is taken of a MISTAKE.

The "carrying away."

What may be the subject of larceny.

Not things attached to the realty;

(c) (1869) L. R. 1 C. C. R. 205; 39 L. J. M. C. 7; 21 L. T. 543; 11 Cox, 347.

(d) (1886) 16 Q. B. D. 190; 55 L. J. M. C. 65; 53 L. T. 773; 50 J. P. 181.

(e) [1895] 2 I. R. 709; 18 Cox, 267.

owner's real estate, and their removal was not regarded as theft. An apple upon the bough, for example, could not be stolen because, from its adherence to the freehold, it was not larceny to steal the growing tree itself. So, too, with regard to standing corn or growing grass. But if the apple were picked up after it had fallen to the ground, or the corn or grass were carried off after it had been cut, the wrongdoer would not have been held exempt from criminal process. Thus, where a trespasser cut down grass not his property, and left it lying on the ground, returning three days after, and carrying it away, he was held rightly convicted of larceny at common law (*R. v. Foley*) (f).

Nor animals
feræ naturæ,
dogs, &c. :

Again, it was no larceny at common law to take animals *feræ naturæ* and unreclaimed, such as deer in a forest, or game, or fish in a river; nor even wild animals kept in confinement as objects of curiosity, unless they were so kept to serve for the food of man, or for profit; nor creatures of a "base nature," such as dogs, or cats, upon which the law set little or no value.

The stealing of other animals, which are *domesticated*, is, however, simple larceny, *e.g.*, young partridges reared by a domestic hen, and accustomed to sleep under her wing at night (*R. v. Shickle*) (g); and there is special punishment provided, as we shall see, for the stealing of *horses, cattle, and sheep*.

But it is to be observed as to animals *feræ naturæ* that, although, while living, they are not in strictness the personal property of anyone, yet, when killed upon the soil where they are started, they become the property of the owner of the soil. It follows, therefore, that, although if a man killed a rabbit and carried it away at once, or very shortly afterwards, it would clearly be no larceny, *the whole transaction being continuous*, yet, if there were an interval between the act of shooting and the act of carrying away, during which something took place amounting, in effect, to a *change of possession* from the accused to the owner of the soil, or if some other person came and carried off the dead rabbit, the act of

(f) (1891) 26 L. R. Ir. 299.

(g) (1868) L. R. 1 C. C. R. 158; 32 J. P. 790.

appropriation might amount to larceny (*R. v. Townley* (h); *R. v. Read* (i); and cf. as to the stealing of pheasants' eggs which have been *reduced into possession* by the prosecutor, *R. v. Stride* (k). See also *GAME*, ante, p. 499.

Nor was it possible at the common law to convict a man of stealing a *chose in action* such as a bill of exchange or a written agreement. And this doctrine was carried so far that, although, if a man stole an agreement which for want of a stamp was wholly void, he could be convicted of stealing the piece of paper on which it was written; yet if he stole an unstamped agreement which might at any moment be made binding by having a stamp impressed on it, he could not be convicted because the document was a *chose in action*, and its character as a piece of paper had thereby become absorbed (cf. *R. v. Morrison*) (l). Nor choses in action.

In recent times, however, there have been a number of statutory modifications of these doctrines, and it is now an offence to steal *fences, trees, growing fruit, metal, &c.*, when attached to the freehold; to steal animals which did not form the subject of larceny at common law; or to steal choses in action. But although some of these statutory offences are *punishable as larceny*, yet it should be noted that the offence is *not larceny*, but a statutory felony or misdemeanour, as the case may be. Statutory modifications.

It may be added that the *possession* of goods recently stolen raises a presumption against the person with whom they are found, and juries are generally directed that if the prisoner is found in possession of goods *recently* stolen and does not give a satisfactory account of how he became possessed of them, they are entitled to assume that he either stole them or received them knowing them to have been stolen. This, however, is a presumption of fact, and not of law, and only exists if the possession is *recent*; so that, if a horse were stolen in September and found in the prisoner's stable in the following March, Possession of stolen goods.

(h) (1871) L. R. 1 C. C. R. 315; 40 L. J. M. C. 144; 24 L. T. N. S. 517; 35 J. P. 709.

(i) (1878) 3 Q. B. D. 131; 47 L. J. M. C. 50; 37 L. T. 722; 42 J. P. 470.

(k) [1908] 1 K. B. 617; 77 L. J. K. B. 490; 98 L. T. 455; 72 J. P. 93; 21 Cox, 563; 24 T. L. R. 243.

(l) (1861) Bell, 164.

this fact alone would not be sufficient to put the accused upon his defence (cf. *R. v. Harris*) (*m*). The mere circumstance that goods are found in a man's dwelling-house, standing alone—apart, *e.g.*, from any claim or admission by him—is not sufficient evidence of possession by him; not even sufficient evidence to corroborate the oath of an accomplice who alleges that the occupier of the house was a party to the theft of the goods (*R. v. Pratt*) (*n*). And see *post*, p. 873.

In Metropolitan Police District.

Within the Metropolitan Police District a constable may stop and detain any person reasonably suspected of having in his possession, or to be conveying, anything stolen or unlawfully obtained (2 & 3 Vict. c. 47, s. 66). And if such person does not give a satisfactory account of how he came by the article in question, he is liable to imprisonment, with hard labour, for two months, or to be fined 5*l.* (2 & 3 Vict. c. 71, s. 24).

As to a servant taking corn, &c., to feed his master's horses, see *post*, p. 709.

As regards the possession of military arms, clothes, accoutrements, &c., see SOLDIER, *post*, p. 886.

See also HUSBAND AND WIFE, *ante*, p. 563.

Non-Indictable Offences under the Larceny Act

(24 & 25 Vict. c. 96).

Powers of arrest.

Any person found committing an offence under the Larceny Act (except that of angling in the day-time) may be apprehended without warrant by *any person* and brought before a justice (*ante*, p. 47). A constable may, moreover, apprehend without warrant anyone whom he finds lying or loitering in a highway, yard or other place during the night and whom he has good cause to suspect of having committed or being about to commit any *felony* under the Act (s. 104). "Night" is deemed to include the period between 9 P.M. and 6 A.M. (s. 1).

Recovery of penalties.

The following offences are punishable only on *summary conviction*. The maximum penalty is inserted below in brackets after the offence, and in default of *payment* of the amount of the fine and compensation, the defendant

(*m*) (1860) 8 Cox, 333.

(*n*) (1865) 4 F. & F. 315.

may be imprisoned, with or without hard labour, according to scale (p. 111).

When several persons are convicted of *jointly* committing the offence, *each* of them may be adjudged to pay the full amount of compensation ; but no more than the actual amount of damage must be paid to the party aggrieved, the remainder going, as though a penalty, to the county or borough treasurer (s. 106).

One justice may try any of the offences (a) to (i) inclusive, but as to the limits of the power of punishment possessed by a single justice, see *ante*, p. 12.

As to the power of discharging the accused for a *first offence* on his making amends, see *ante*, p. 169.

Receivers and accessories may be punished as principals (s. 97). Accessories.

APPEAL lies to the quarter sessions if the amount to be paid exceeds 5*l.*, or if peremptory imprisonment is inflicted, or if the conviction is before a single justice (s. 110). Appeal.

As to DOGS, see *ante*, p. 410 ; as to FISHING, see *ante*, p. 472 ; and as to HARES AND RABBITS in warrens, see *ante*, pp. 497, 500.

(a) Hunting, killing, or wounding, or attempting to kill or wound, *deer* kept in the *uninclosed* part of a forest, chase, or purlieu. [50*l.*] (24 & 25 Vict. c. 96, s. 12.) Hunting, &c., deer.

If the offence is committed after a previous conviction for any offence relating to deer, it is a felony, and is not punishable summarily.

There are also penalties imposed where a man is found in unlawful possession of any part of a deer, or of a snare, &c., for taking it ; where he sets an engine to take deer ; or where he destroys the fences of land in which deer are kept (*ib.* ss. 14, 15).

(b) Stealing, or killing with intent to steal, any bird, beast, or other animal ordinarily kept in a state of confinement, or for any domestic purpose, and *not being the subject of larceny at common law*. [IMPRISONMENT for not more than SIX MONTHS, with or without hard labour ; or, FINE, not exceeding 20*l.* above the value of the animal.] (*ib.* s. 21.) Stealing animals not subject of larceny at common law.

The defendant must, at the outset, be given the option of TRIAL BY JURY (*ante*, p. 63). For a *second offence* the

defendant is liable to *imprisonment* for not more than twelve months.

This section refers to such creatures as *cats, ferrets, squirrels, parrots, singing-birds, monkeys, &c.* (see *ante*, p. 658).

Possession of such animals.

(c) Having in possession or on his premises such bird as is referred to in (b), or the plumage thereof, or such beast or the skin thereof, or such animal or any part thereof, knowing that such bird, beast or animal had been stolen. [Penalty 20*l.* above value; *second offence* as in (b).] (*Ib.* s. 22.)

Killing, &c., pigeons.

(d) Killing, wounding, or taking *house-doves or pigeons* under such circumstances as would not amount to larceny at common law. [2*l.* beyond the value of the bird.] (*Ib.* s. 23.)

This section refers to the killing and appropriation of pigeons flying about, but the killing must be unlawful and wilful, and without a *bonâ fide* claim of right to do the act (see *Taylor v. Newman* (o), where a farmer killed pigeons under a belief that he had a legal right to do so in order to protect his property).

Stealing, &c., trees to amount of 1*s.*

Cf. offence (o), *post*, p. 664.

Form of Information. *post*, p. 1225.

(e) Stealing, or damaging with intent to steal, any *tree, shrub, or underwood*, wheresoever growing, to the amount of *one shilling*. [5*l.* above the value or extent of damage.] (*Ib.* s. 33.)

For a *second offence* the punishment is *imprisonment* for not more than twelve months, and the accused must be given the option of TRIAL BY JURY; as to the procedure to be adopted, see *ante*, p. 65.

For a *third offence* the accused must be committed for trial for felony unless he elects to be tried summarily (*ante*, p. 134).

But, as to certain special cases, see (o), *post*, p. 664.

Stealing, &c., fences.

(f) Stealing, or breaking or throwing down with intent to steal, any part of a live or dead *fence*, or any post, pale, wire, or rail used as a fence, or any stile, or gate, or any part thereof. [Punishment for first or second offence as in (e).] (*Ib.* s. 34.)

Unlawful possession of trees, fences, &c., to value of 1*s.*

(g) Being in *unlawful possession* of any tree, shrub, or underwood, or any part of the same, or of any fence, post, pale, wire, or rail used as a fence, stile, or

gate, being of the value of *one shilling* at the least.
[2*l.* beyond the value.] (*Ib.* s. 35.)

If the articles were in the possession or on the premises of the defendant with his knowledge, it is for him to satisfy the court that he came lawfully by them.

- (h) Stealing, or destroying or damaging with intent to steal, “any *plant, root, fruit, or vegetable production* growing in any garden, orchard, pleasure-ground, nursery-ground, hothouse, greenhouse, or conservatory.” [IMPRISONMENT for not more than six MONTHS, with or without hard labour; or, FINE not exceeding 20*l.* beyond the value or damage.] (*Ib.* s. 36.)

Stealing, &c.,
plants in
gardens, &c.

The defendant must, at the outset, be given the OPTION OF TRIAL BY JURY (*ante*, p. 63).

A second or subsequent offence is a *felony*, and the accused must be committed for trial unless he elects to be tried summarily (*ante*, p. 134).

- (i) Stealing, or destroying or damaging with intent to steal, “any *cultivated root or plant* used for the food of man or beast, or for medicine, or for distilling, or for dyeing, or for or in the course of any manufacture, and growing in any land, open or enclosed, not being a garden, orchard, pleasure-ground, or nursery-ground.” [IMPRISONMENT for not more than one MONTH, with or without hard labour; or, FINE of 1*l.* and costs beyond the value or damage, but the imprisonment in default of payment must not exceed one month.] (*Ib.* s. 37.)

Stealing, &c.,
plants else-
where than in
gardens, &c.

For a SECOND offence the punishment is *imprisonment* for not more than SIX MONTHS, and the accused must, therefore, be given the OPTION OF TRIAL BY JURY. As to the procedure to be adopted, see *ante*, p. 65.

It will be observed that the word “fruit” does not occur in this section.

Indictable Offences under the Larceny Act.

Of *indictable* offences under the Larceny Act some are triable summarily (if the court thinks fit and if the accused consent), under certain conditions as to the value of the property stolen, the age of the accused, &c., which are set forth *ante*, pp. 134—140. The remaining

Indictable
offences.

indictable offences under the Act can be tried only before a jury unless the accused is a young person not more than sixteen years of age who consents to summary trial (*ante*, p. 135). As to the place of trial, see *ante*, p. 7.

As to apprehension without warrant, see *ante*, p. 47 ; and as to the power of discharging the accused for a *first offence* on his making amends, see *ante*, p. 169.

Offences as to which there is SUMMARY JURISDICTION.

Simple larceny.

Form of Information, *post*, p. 1225.

Larceny as bailee.

Stealing oysters.

Stealing, &c., valuable securities.

Stealing glass, metal, fixtures, &c., belonging to buildings, or metal fences.

Stealing trees, &c., to value exceeding 1*l.*, in parks, gardens, &c. ;

or elsewhere to value of 5*l.*

The following are *indictable felonies* which may, under the conditions referred to above, be TRIED BY A COURT OF SUMMARY JURISDICTION.

(j) Simple larceny. [Penal servitude, five years.] (24 & 25 Vict. c. 96, s. 4.)

(k) Larceny as a *bailee*. [As in (j).] (*Ib.* s. 3.) See *ante*, p. 654. But a man must not be convicted for this offence if the act complained of is punishable *summarily* under some other statute, as, *e.g.*, under 13 Geo. 2, c. 8, now repealed (*R. v. Daynes*) (*p.*).

(l) Stealing *oysters* from an oyster-bed or fishery sufficiently marked out or known as such. [As in (j).] (*Ib.* s. 26.) For other offences, see the section.

(m) Stealing, or fraudulently destroying, cancelling, or obliterating any *valuable security other than a document of title to lands*. [As in (j).] (*Ib.* s. 27.) As to “money” or “postal” orders, see *ante*, p. 483.

(n) Stealing, or breaking or severing with intent to steal, any *glass or woodwork belonging to a building ; or any metal, utensil, or fixture of any kind, fixed in or to any building ; or any metal work fixed in private land, or for a fence to any dwelling-house, garden, or area, or in any street or place dedicated to public use or ornament, or in any burial-ground*. [As in (j).] (*Ib.* s. 31.)

(o) Stealing, or destroying or damaging with intent to steal, a *tree, shrub, or underwood growing in any park, pleasure-ground, garden, orchard, or avenue, or in any ground adjoining or belonging to any dwelling-house, if the value of the property stolen or the amount of injury done exceeds 1*l.** If the tree, shrub, or underwood is growing *elsewhere*, a similar offence is committed if the value of the property stolen or the amount of injury done exceeds 5*l.* [As

in (j).] (*Ib.* s. 32.) See also (e), third offence, and (h), second offence (*ante*, pp. 662, 663).

- (p) *Clerk or servant* stealing any chattel, money, or valuable security belonging to or in the possession or power of his master or employer. [Penal servitude for fourteen years.] (*Ib.* s. 67.) Larceny by clerk or servant.
- (q) *Stealing from the person.* [As in (p).] (*Ib.* s. 40.) Larceny from the person.
- (r) *Co-partner* or one of several *joint beneficial owners* of money, goods, securities, or other property, stealing the money, &c., of the partnership or belonging to such joint beneficial owners. [As in (j).] (31 & 32 Vict. c. 116, s. 1.) Cf. *ante*, p. 439. Larceny by partner or joint owner.
- The following are *indictable* offences which can IN NO CASE BE TRIED SUMMARILY unless the accused is *under sixteen years of age*. *Offences punishable only ON INDICTMENT.*
- (s) Stealing a *horse*, mare, gelding, colt, or filly; or a bull, cow, ox, heifer, or calf; or a ram, ewe, *sheep*, or lamb. [Penal servitude for fourteen years.] (24 & 25 Vict. c. 96, s. 10.) Stealing horses, cows, sheep, &c.
- (t) Killing any of the animals last mentioned (or any other animal the stealing of which would have amounted to felony, *ante*, p. 658), with *intent to steal* the carcass, skin, or any part of the animal. [As for *stealing* the animal.] (*Ib.* s. 11.)
- (u) Stealing, or fraudulently destroying, concealing or obliterating, any *document of title to land*. [Penal servitude for five years; triable only at assizes.] (*Ib.* s. 28.) Stealing, &c., document of title to land.
- (v) Stealing, or fraudulently destroying, concealing, or obliterating, any *will*, codicil, or other testamentary instrument. [Penal servitude for life; triable only at assizes.] (*Ib.* s. 29.) Stealing, &c., wills.
- (w) Stealing, or taking for a fraudulent purpose, from any person or place of deposit, or cancelling, destroying, obliterating, or concealing, any *record, writ, &c.*, or other original document belonging to a court of justice or of record, or relating to any Government or public office. [Penal servitude for five years; triable only at assizes.] (*Ib.* s. 30.) Stealing, &c., public records.

Where the defendant forcibly took warrants from a county court bailiff, with intent to deprive the bailiff, as he supposed, of his authority and so defeat an execution, the defendant was held to be rightly convicted under

this section though not guilty of larceny (*R. v. Bailey*) (q).

Stealing, &c.,
ore or coal in
mines.

(x) Stealing, or severing with intent to steal, the *ore* of any metal, black lead, or coal from any *mine* bed, or vein. [Imprisonment for two years.] (*Ib.* s. 38.) So, also, a similar offence is committed by any employee in the mine who removes or conceals any ore, &c., with intent to defraud any proprietor, workman, or miner employed therein. (*Ib.* s. 39.)

Robbery.

(y) *Robbing* any person. [Penal servitude for fourteen years.] (*Ib.* s. 40.)

As to *assaults* with intent to rob, see *ante*, p. 290.

In order to constitute *robbery* the taking must be accompanied by violence, threats, or putting in fear: and, even where a bundle was forcibly snatched from a man's hand, this was held to be larceny and not robbery, because the violence was displayed merely to get possession of the bundle and was not directed against its owner (2 Russell on Crimes, 7th edit., p. 1127).

Robbery with
violence, &c.

(z) *Robbery with violence*; or in company with *one or more other persons*; or when *armed* with an offensive weapon. (*Ib.* s. 43; triable at assizes only.) See *ante*, p. 290.

Demanding
property with
menaces.

(aa) Demanding property with *menaces*, or *by force*, with intent to steal the same. [Penal servitude for five years.] (*Ib.* s. 45.) Cf. *ante*, p. 210, and *post*, p. 904.

Stealing in
dwelling-
house to
value of 5*l.*

(bb) Stealing in a *dwelling-house* any chattels, money, or valuable security to the value of 5*l.* [Penal servitude for fourteen years.] (*Ib.* ss. 53, 60.) As to the meaning of *dwelling-house*, see *ante*, p. 543.

Stealing in
dwelling-
house with
menaces.

(cc) Stealing in a *dwelling-house* any chattel, money, or valuable security, *and by menaces or threats* putting anyone therein in bodily fear. [Penal servitude for fourteen years.] (*Ib.* ss. 53, 61.) Cf. HOUSEBREAKING, *ante*, p. 544.

Stealing
goods during
manufacture.

(dd) Stealing to the value of 10*s.* any goods of woollen, silk, &c., laid or exposed *during manufacture* in any building, field, or other place. [Penal servitude for fourteen years.] (*Ib.* s. 62.)

Stealing from
ships, &c.

(ee) Stealing from *ships or boats* in harbours, rivers,

(q) (1872) L. R. 1 C. C. R. 347; 25 L. T. 882; 20 W. R. 301.

canals, &c.; or from a dock or wharf; or from a ship in distress or wrecked. [Penal servitude for fourteen years.] (*Ib.* ss. 63, 64.)

(ff) Stealing, by a *tenant or lodger*, of any chattel or fixture let to be used with the house or lodging, whether the contract was entered into by the accused or by some person on his or her behalf. [Imprisonment for two years, or (if value exceeds 5*l.*) penal servitude for seven years.] (*Ib.* s. 74.)

Stealing by a tenant or lodger.

(gg) It is specially provided that any person who *maliciously or fraudulently* abstracts, causes to be wasted or diverted, consumes, or uses any *electricity* shall be guilty of *simple larceny* and punishable as in (j). (45 & 46 Vict. c. 56, s. 23.)

Stealing ELECTRICITY.

LIBEL.

A LIBEL, in the sense in which the word is used in criminal law, is defined by Blackstone as “a malicious defamation of any person, made public either by writing, signs, or pictures, in order to provoke him to wrath, or expose him to public hatred, contempt, or ridicule.” But, where a writing or drawing is obviously calumnious, the law will presume a malicious intent, and malice need not be proved *aliunde* (cf. *R. v. Munslow*) (*r*). A libel may be expressed by way of irony, or even under the form of a question or conjecture; and a defamatory writing or picture is libellous if it can be clearly inferred who was the person alluded to or represented, even although no name may have been directly mentioned. It has even been held that words which would apply to a particular person by name or description may constitute a libel on him, although they were *not intended* to apply to him (*Jones v. Hulton*) (*rr*). But it is not clear how far this doctrine could be extended to criminal charges, and see the *dissenting judgment* of *Fletcher Moulton*, L.J.

Meaning of libel

SLANDER, *i.e.*, the *speaking* of defamatory words maliciously, is not a criminal offence, though it is said that if the words are of a very gross nature, or addressed

and slander.

(*r*) [1895] 1 Q. B. 758; 64 L. J. M. C. 138; 72 L. T. 301; 43 W. R. 495.

(*rr*) [1909] 2 K. B. 444; 78 L. J. K. B. 937; 101 L. T. 330; 25 T. L. R. 597. Affirmed in H. L. 26 T. L. R. 128; 54 S. J. 116.

to a magistrate in the execution of his office, an indictment will lie or a criminal information may be laid; and cf. *post*, p. 896.

Publication.

Though in *civil* actions it is necessary to prove that the libel was *published* to at least one person other than the person libelled, this is not necessary in a criminal prosecution, as such a prosecution is based on the tendency to provoke a breach of the peace. It is, therefore, an offence to send an abusive and libellous letter to a man, although no one may see the contents of it but himself (cf. *R. v. Adams* (s); *R. v. Burdett* (t)). But the innocent distribution of a book or paper, which the disseminator was not bound to know was likely to contain a libel, is not a "publication" of it (*Emmens v. Pottle*) (u); i.e., if the defendant can show that his ignorance was not due to any *neglect* on his part (*Vizetelly v. Mudie's Library*) (x). There is statutory provision as to the rebutting of a *prima facie* case of publication by an *agent* (6 & 7 Vict. c. 96, s. 7).

Husband and wife.

A married woman cannot take criminal proceedings against her husband for a personal libel upon herself, a man and his wife being for many purposes one person in law; so that the one cannot take criminal proceedings against the other, except in cases where bodily injury has been inflicted, or where the provisions of the Married Women's Property Acts (*ante*, p. 563) are applicable (*R. v. Lord Mayor of London*) (y). An indictment will lie for a libel on a deceased person if the libel were such a vilification of the dead as to be calculated to incite the living to commit a breach of the peace, or if it were calculated to injure the descendants of the dead man and were published with that intent (cf. *R. v. Labouchere*) (z).

Libel on the dead.

Publication of libel an indictable misdemeanour.

The publication of a libel was a misdemeanour at common law; and it is now provided by statute that everyone commits a *misdemeanour* who

(s) (1888) 22 Q. B. D. 66; 58 L. J. M. C. 1; 59 L. T. 103; 53 J. P. 377.

(t) (1820) 4 B. & Ald. 95.

(u) (1885) 16 Q. B. D. 354; 55 L. J. Q. B. 51; 50 J. P. 228; 34 W. R. 116.

(x) [1900] 2 Q. B. 170; 69 L. J. Q. B. 645; 16 T. L. R. 352.

(y) (1886) 16 Q. B. D. 772; 55 L. J. M. C. 118; 50 J. P. 614.

(z) (1884) 12 Q. B. D. 320; 52 L. J. Q. B. 392; 50 L. T. 177; 48 J. P. 165.

- (a) Publishes or threatens to publish *any libel* upon any person, or threatens to publish, or proposes to abstain from or prevent the publishing of, *any matter or thing* touching any other person, *with a view to extort money or its equivalent, or to induce the conferment of any office or appointment.* [Imprisonment, three years.] Cf. ACCUSATIONS OF CRIME, *ante*, p. 210.
- (b) Maliciously publishes any defamatory libel *knowing the same to be false.* [Imprisonment, two years, and fine.]
- (c) Maliciously publishes *any defamatory libel* [Imprisonment, one year, and fine.] (6 & 7 Vict. c. 96, ss. 3, 4, 5.)

Indictable
misde-
meanours.

None of these offences is triable except at assizes, so far as adults are concerned : but as to the power of summary trial in the case of *libels in NEWSPAPERS*, see *post*, p. 671. It is said, too, that where defendants are charged with publishing libels, especially in the case of private libels by means of insulting letters, &c., justices may bind the accused over to be of good behaviour. And, if a person publishes improper comments with reference to the defendant in a case before justices *which may possibly come before the High Court*, that court will entertain an application to attach such person for contempt (*R. v. Davies*) (a).

The fact that the contents of the alleged libel are *true*, although it affords a complete answer to a civil action, is not in itself a sufficient defence where a person is *indicted* for a defamatory libel. The defendant must further show that he was not actuated by malice, and that it was *for the public benefit* that such matter should have been published. This defence, moreover, can only be raised by *plea* in answer to the indictment, and it is not the duty of *justices* to receive any evidence which may be tendered for the purpose of showing the truth of that which is *prima facie* libellous. So, again, on a plea of "not guilty" at the trial, the defendant may show that the matter is *not defamatory*, as being *fair comment* on a question of public and general interest ; or he may establish that, although the matter is defamatory, the libel was published on a *privileged occasion* (cf.

Evidence.

(a) [1906] 1 K. B. 32 ; 75 L. J. K. B. 104 ; 22 T. L. R. 97.

Evidence—
contd.

R. v. Munslow) (b). But the duty of justices, before whom a person is brought with a view to his being committed or held to bail on a charge of this nature, is simply to ascertain—(i.) Whether the matter in question be in point of law and upon the face of it a libel; (ii.) Whether the charge of publication be so far brought home to the accused as that he ought to be put upon his trial (*R. v. Carden*) (c). If, however, the accused is charged with offence (b)—*i.e.*, with publishing a libel *knowing it to be false*—the justices, it seems, should receive evidence tending to disprove such guilty knowledge which is of the very gist of the accusation; for, of course, if it can be shown that the libel is true the defendant cannot have known it to be false. In this case, therefore, the question as to the truth of the statement alleged to constitute the libel may incidentally become material in the first instance on the hearing before the magistrates.

Moreover, the inability of justices to entertain evidence for the purpose of showing that the libel is true has been removed by statute, in so far as proceedings against the persons responsible for the publication of a *newspaper* for a libel published therein are concerned (*post*, p. 671).

Venue.

If the libel is by letter the accused may be committed to take his trial either in the county from which the letter was sent, or in that in which it was received.

Libel on
candidate at
parlia-
mentary
election.

There is special provision as to making or publishing a false statement of fact as to the personal character or conduct of a candidate at a *parliamentary election* for the purpose of affecting the return of any candidate. The publication of such a statement, if it be made without reasonable belief in its accuracy, is to be deemed an "illegal practice" within the Corrupt and Illegal Practices Prevention Act, 1883. The PENALTY would, therefore, be a fine of 100*l.*, on summary conviction, and the offender would, for five years, be incapable of being registered as an elector in the district (58 & 59 Vict. c. 40).

Libels in Newspapers.

There are special statutory provisions as to the publication of libels in NEWSPAPERS, and no criminal

Criminal
proceedings
against pro-
prietors, &c.,
of news-
papers.

(b) *Ante*, p. 667.

(c) (1880) 5 Q. B. D. 1; 49 L. J. M. C. 1; 41 L. T. 404; 28 W. R. 133; 44 J. P. 137.

prosecution for libel can be commenced against the proprietor, publisher, editor, or other person responsible for the publication of the *newspaper* in which a libel appears without the order of a judge at chambers, obtained on application after notice to the accused (51 & 52 Vict. c. 64, s. 8). "Newspaper" is defined to mean any paper containing public news, or advertisements, &c., published periodically at intervals not exceeding twenty-six days (44 & 45 Vict. c. 60, s. 1). It may be mentioned that contemporaneous reports of proceedings publicly heard before a court exercising judicial authority, the reports of proceedings at public meetings and at open meetings of public bodies, &c., as well as Government and police notices, may be published in a newspaper with impunity if the reports are fair and accurate. But the protection does not extend to blasphemous or indecent matter, nor to matter not being of public concern and published for the public benefit; and there are special provisions requiring the insertion of a reasonable statement by way of contradiction or explanation if desired by the person injuriously affected by the report (51 & 52 Vict. c. 64, ss. 3, 4).

Upon the hearing of a charge of libel preferred against the proprietor, publisher, editor, or other person responsible for the publication of the newspaper in which the libel has appeared, the justices may receive evidence (a) as to the publication being for the public benefit; (b) as to the matters charged in the libel being true; (c) as to the report being fair and accurate, and published without malice; (d) as to any other matter which might be given in evidence by way of defence if the trial were proceeding on indictment. If, after hearing such evidence, the justices think that there is a strong or probable presumption that a *jury would acquit* the accused, they may *dismiss* the case (44 & 45 Vict. c. 60, s. 4).

Justices entitled to receive evidence of justification, &c.

So, too, if the justices, upon the hearing of such a charge, are of opinion that, though the accused is shown to have been guilty, the libel was of a *trivial character*, and that the offence may be adequately punished by the imposition of a pecuniary penalty not exceeding 50*l.*, the court must cause the charge to be reduced into writing and read to the accused. A question must then be addressed to him to the following effect: "*Do you desire*

Justices may offer summary trial

to be tried by a jury or do you consent to the case being dealt with summarily?” and if the accused assents to the case being disposed of summarily, the justices may proceed to convict him and impose a

Penalty.

PENALTY not exceeding 50*l.*, and in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111) (*ib.* s. 5).

P. 1039.

So far as is consistent with the tenor thereof, s. 27 of the Summary Jurisdiction Act, 1879 (as to the trial of indictable offences dealt with summarily). is to apply to the proceedings. See *ante*, p. 138.

Newspapers
to be regis-
tered and
annual
returns to be
made.

There is statutory provision as to the registration of newspapers, except such as belong to joint-stock companies, and as to the admissibility of a certified extract from the register as conclusive evidence of the contents of the register, and as *primâ facie* evidence of the facts stated in the extract (44 & 45 Vict. c. 60, ss. 8, 15). There is, too, provision as to the making of an annual return as to the names of the proprietors, &c.; and heavy PENALTIES are imposed in respect of the omission to make returns and in respect of wilful misrepresentation in such returns (*ib.* ss. 10, 12). Justices have, moreover, power to direct, by summary ORDER, that a return be made within a specified time (*ib.* ss. 10, 16). As to the enforcement of such an order, see *ante*, p. 120, and Appendix, p. 1044.

As to SEDITIOUS LIBELS, see Archbold's Criminal Pleadings, 23rd edit., pp. 986—999; and as to OBSCENE LIBELS, cf. *R. v. De Marny*, cited *ante*, p. 150.

As to the Vexatious Indictments Acts, see *ante*, p. 133.

LIBRARIES.

LIBRARIES
OFFENCES
ACT, 1898.

Special provision is made as to misbehaviour in a *library* under the Public Libraries Act, 1892, or in any *museum*, *art gallery* or *school* provided under that Act (55 & 56 Vict. c. 53; 1 Edw. 7, c. 19). The provision also extends to any *library* or *reading-room* maintained by a society registered under the Industrial and Provident Societies Act, 1893 (56 & 57 Vict. c. 39), or under the Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), or by a registered trade union.

Offences.

Thus it is an OFFENCE in any such place, *to the*

annoyance or disturbance of any person using the same Libraries—
(*a*) to behave in a disorderly manner ; (*β*) to use violent, *contd.*
abusive, or obscene language ; (*γ*) to bet or gamble.
So, too, it is an offence to persist (after proper warning)
in remaining therein beyond the hours fixed for closing
(61 & 62 Vict. c. 53).

PENALTY not exceeding 2*l.*, recoverable by *distress*, and, Penalty.
in default, imprisonment *without* hard labour according
to scale (p. 111).

A library authority may make BYE-LAWS relating to Bye-laws.
any library, museum, art gallery or school under their
control by virtue of the Acts of 1892 or 1901. Such
bye-laws may be made for the purpose of (*a*) regulating
the use of the library, &c., and protecting its contents
from injury ; (*β*) requiring security against loss of,
or injury to, books, &c.; and (*γ*) providing for the
exclusion or removal of offenders. The bye-laws must
be made in accordance with ss. 182, 186 of the Public
Health Act, 1875 (*post*, p. 804), as though “local authority”
included “library authority” (1 Edw. 7, c. 19, s. 3).

LOTTERIES.

Everyone commits an OFFENCE who *publicly or privately* Keeping un-
KEEPS ANY OFFICE OR PLACE to exercise, keep open, or authorized
expose to be played by dice, cards, balls, figures, or *by* lottery.
any other way, contrivance, or device whatsoever, any
game or lottery called “Little Goe,” or *any other* LOTTERY
whatever not authorized by Parliament. So, too, he com-
mits a like OFFENCE if he *knowingly suffers* such game or
lottery in his house, room, or place (42 Geo. 3, c. 119, s. 2).

“A lottery is a distribution of prizes *by lot or chance*.”

A person who, *on one occasion only*, holds a lottery in
a place does not “keep” such a “place” for exercising
a lottery therein within the meaning of this section. The
user contemplated by the statute is something like a
habitual keeping of the place for the prohibited purpose
(*Martin v. Benjamin*) (*d*). But when the lottery is held on
a single occasion, proceedings may often be taken, under

(*d*) [1907] 1 K. B. 64 ; 76 L. J. K. B. 81 ; 96 L. T. 197 ;
71 J. P. 30 ; 21 Cox, 378 ; 23 T. L. R. 53.

GAMING ACT, 1802—*contd.* s. 41 of the Lotteries Act, 1823 (*infra*), for selling lottery tickets, or possibly on indictment, under 10 & 11 Will. 3, c. 17, s. 2 (as in *R. v. Crawshaw*) (*e*). The Act of Will. 3 was directed against *keeping a LOTTERY* and not against *keeping a PLACE* for the *purpose of a lottery* (per *Ridley, J.*, in *Martin v. Benjamin*) (*ee*).

Penalty. The offender (in addition to penalties recoverable on indictment or by action at the suit of the Attorney-General) is punishable as a *rogue and vagabond*, that is to say, by IMPRISONMENT, with or without hard labour, for THREE MONTHS.

There is, of course, power to impose a fine, instead of peremptory imprisonment (*ante*, p. 106), but the fine must not exceed 25*l.*, and, in default of distress, the imprisonment will be *without* hard labour, according to scale (p. 111).

One justice may convict, but as to the limits of his power of punishment, see *ante*, p. 12.

The keeper of the lottery may be arrested *flagrante delicto* by anyone, and a justice may authorize the breaking open of doors and the seizure of all persons concerned (42 Geo. 3, c. 119, s. 4).

Selling, or publishing proposals for the sale of, lottery tickets.
LOTTERIES ACT, 1823, s. 41.

Moreover, everyone commits an offence who *sells any ticket, chance, or share* in a ticket in any lottery, except such as is authorized by Parliament to be sold, or who *publishes any proposal* or scheme for the sale of any such ticket or chance (4 Geo. 4, c. 60, s. 41). Under this section, the offender forfeits 50*l.*, recoverable by action at the suit of the Attorney-General, and is further to “be deemed a *rogue and vagabond* and shall be punished as such in *manner hereinafter directed*.” Now, by s. 67 of the Act last cited, the punishment was imprisonment for six months, and (in case of a second offence) whipping in addition; but the Vagrancy Act of the following year provided that, whenever by any statute then in force it was directed that any person should be punished as a “*rogue and vagabond*” for any offence specified in such statute, such person should be punished under the provisions, powers and directions of the Vagrancy Act (*post*, p. 921).

(*e*) (1860) 30 L. T. 58; Bell, C. C. 303.

(*ee*) [1907] 1 K. B. at p. 66.

Newspaper prize competitions have been held to fall within s. 41 of the Lotteries Act, 1823, where there was the publication of a scheme for the sale of chances, although the purchaser paid no money beyond the price of the paper (*Hall v. McWilliam*) (*f*). So, in a very recent case, it appeared that newspaper proprietors gave away large quantities of metal discs each bearing a number and the words: "Keep this, it may be worth 100*l*." See the *Weekly Telegraph* to-day." Winning numbers were published periodically in the paper and prizes were given to the disc holders. Information as to the winning numbers could be obtained *gratuitously* at the office of the paper: but it was found as a fact that the scheme was promoted to induce people to buy the paper, and that its circulation was thereby actually increased 20 per cent. It was accordingly held that the distribution of discs was not really gratuitous, as most of the recipients had to buy a paper; so that the chances of winning were *paid for* by them (*Willis v. Young*) (*g*).

Newspaper prize competitions.

Some years earlier there had been several convictions of proprietors of newspapers, who offered, by advertisement in their periodicals, prizes for "missing words," or in respect of other matters determined *by chance*, and not by skill. But, if the event does not depend upon *pure chance*, it was held not to be a lottery, as where, in a "coupon competition," the coupons were filled up by purchasers of a newspaper with their "selections" for forthcoming horse-races (*Stoddart v. Sagar*) (*h*). And so it was held that, where there was an offer to the readers of a paper of a prize for the prediction of the number of births and deaths in London during a specified week, the competition did not constitute a lottery (*Hall v. Cox*) (*i*).

Notwithstanding the general power to substitute a fine in lieu of peremptory imprisonment, it has been held that a joint stock company incorporated under the Companies Act cannot be convicted as "rogues and

Limited company not punishable as "rogues and vagabonds."

(*f*) (1901) 65 J. P. 472; 15 T. L. R. 562; 85 L. T. 239.

(*g*) [1907] 1 K. B. 448; 76 L. J. K. B. 390; 96 L. T. 155; 23 T. L. R. 23; 71 J. P. 6; 21 Cox, 362.

(*h*) [1895] 2 Q. B. 474; 64 L. J. M. C. 234; 44 W. R. 287; 59 J. P. 598.

(*i*) [1899] 1 Q. B. 198; 68 L. J. Q. B. 167; 79 L. T. 653; 47 W. R. 161.

vagabonds" under s. 41 of the Lotteries Act, 1823 (*ante*, p. 674); and the same reasoning would seem to apply to a charge of keeping an unauthorized lottery under 42 Geo. 3, c. 119, s. 2 (*ante*, p. 673) (*Hawke v. E. Hulton & Co., Ltd.* (ii)).

The word "person" used in these sections includes a "body corporate" *unless the contrary intention appears* (*post* p. 1066); but the court held that *such intention did appear*, the words "rogue and vagabond" being "wholly inappropriate as applied to a limited company" (*ib.*). The question of liability to forfeiture in an action at the suit of the Attorney-General was not, of course, in issue in these proceedings.

Illustrations
of "lotteries."

In one case a man advertised a performance, including certain "wonderful illusions," and concluding with "a distribution among the audience of a shower of gold and silver treasures, upon a scale utterly without parallel." Articles were distributed amongst the company, the more costly having numbers affixed to them, and each of these numbered articles was handed to the person who chanced to occupy a reserved seat marked with the corresponding figure. Under these circumstances a conviction was upheld (*Morris v. Blackman*) (j). In another case packets of tea were sold containing coupons for prizes, the value of which differed according to the number of the coupon. The tea was good, and worth the money paid, but the proceeding was, nevertheless, held to be a lottery (*Taylor v. Smetten*) (k).

It will be seen, therefore, that the Act cannot be evaded by the pretext that the money subscribed was purchase-money paid in good faith, or the price of entrance to an entertainment. And a man was held rightly convicted of keeping a lottery where, in a confectioner's shop, he sold packets of sweets, well worth a penny, but containing, in some cases, a halfpenny or more in addition to the sweets (*Hunt v. Williams*) (l).

Sweepstakes.

Promoting a "sweepstake" on a horse-race may amount to keeping a lottery; and, where such a sweepstake was promoted by a licensed victualler on his licensed

(ii) [1909] 2 K. B. 93; 78 L. J. K. B. 633; 25 T. L. R. 474; 73 J. P. 295; 100 L. T. 905; 16 Manson, 164.

(j) (1864) 10 Jur. N. S. 520; 28 J. P. 199; 2 H. & C. 912.

(k) (1883) 11 Q. B. D. 207; 52 L. J. M. C. 101; 48 J. P. 36.

(l) (1888) 52 J. P. 821.

premises, the Court of King's Bench held that he should have been convicted of "keeping" a lottery (*Hardwick v. Lane*) (m). "If it be necessary," said *Alverstone*, C.J., "to prove that the respondent made a profit out of the sweepstakes, there is clear evidence that he did so because the prizes awarded did not equal the amount subscribed. But, in the absence of that evidence, I should have been prepared to hold that the mere fact that persons were attracted to the respondent's licensed premises by means of the sweepstakes was quite sufficient evidence of profit." A "Limerick" competition was recently held by the Court of Appeal to constitute a lottery (see *Blyth v. Hulton & Co., Ltd.*) (n).

Where a *wholesale* confectioner sold packets of sweetmeats, some of which contained coin (as in *Hunt v. Williams*) (o), to a *retail dealer*, with a view to the latter selling them to the public, with the chance of obtaining the money in them, the *wholesale* dealer was held to be rightly convicted of "aiding, abetting, counselling, and procuring the commission of an offence" (*Barratt v. Burden*) (p); see *ante*, p. 149.

Aiding and
abetting.

Art unions are specially protected under 9 & 10 Vict. c. 48, and other statutes. Any voluntary association for the distribution of works of art is legal if incorporated by charter, or if its deed of association has been approved by the Privy Council.

Art unions.

LUNATICS.

We will first consider the power of justices in relation to the *reception of lunatics* (including in this term idiots, and persons of unsound mind) into *ASYLUMS and other institutions for the insane*.

At the Michaelmas quarter sessions in counties, and at special sessions held for quarter sessions boroughs in October, justices are appointed to execute the duties of a "judicial authority" under the LUNACY ACT, 1890 (53 Vict. c. 5, s. 10), which is the Act referred to throughout this article, unless the contrary is expressly stated (q).

Meaning of
"judicial
authority."

(m) [1904] 1 K. B. 204; 73 L. J. K. B. 96; 89 L. T. 630; 52 W. R. 591; 68 J. P. 94.

(n) (1908) 72 J. P. 401; 24 T. L. R. 719.

(o) *Ante*, p. 676.

(p) (1893) 63 L. J. M. C. 33; 10 R. 602; 57 J. P. 772.

(q) *As to special sessions for appointing "visitors" and "licensing" asylums, see ss. 177, 209; and see ante, p. 15.*

The powers of a JUDICIAL AUTHORITY under the Act may be exercised by a *justice so specially appointed* notwithstanding that he may not have jurisdiction in the place where the alleged lunatic is (54 & 55 Vict. c. 65, s. 24). A *judge of county courts* and a *police or stipendiary magistrate* may also exercise the powers of a "judicial authority," but he must not be called upon to do so to such an extent as to interfere with the discharge of his ordinary duties (53 Vict. c. 5, s. 9). In a quarter sessions borough the justices' clerk must notify the appointments to the clerk of the peace to be by him recorded; while, in a non-quarter sessions borough, the justices' clerk records and publishes any appointments of justices to exercise the powers of a "judicial authority" made, under s. 10 (iv.), by the Lord Chancellor (*ib.* s. 10 (vi.)).

Reception
order for
private
patient on
PETITION.

A *private* patient (not found lunatic by inquisition) can be detained only under a RECEPTION ORDER *made by a JUDICIAL AUTHORITY, and founded upon a private APPLICATION BY PETITION, accompanied by a statement of particulars and by two medical certificates* (s. 4). There is, however, a provision authorising, *in cases of urgency*, a person to be detained without the intervention of a justice, on a single medical certificate. Such order is in force for seven days, or (if a petition is pending) until the petition is finally disposed of (s. 11).

Unless for good reasons stated in the petition, it must be presented by the husband or wife, or by a relative of the alleged lunatic, and the petitioner must not be a minor and must have personally seen the alleged lunatic *within fourteen days* before the presentation of the petition (s. 5). As to the requirements relating to the medical certificates, see ss. 28—31. If the usual medical attendant does not sign, the reason for his not doing so must be given. The petition must be considered in private, and if the "judicial authority" is satisfied upon the materials before him, he may make the RECEPTION ORDER *forthwith*, even without seeing the alleged lunatic; or, the "judicial authority" may appoint a time *within seven days* after the presentation of the petition for its further consideration, and he may, if he please, visit the lunatic meanwhile, or make such other inquiries as may be deemed desirable. The petitioner must, however, have notice of the appointment served upon him personally, or by registered letter. The

“judicial authority” may then make the ORDER, dismiss the petition, or adjourn the hearing for not more than fourteen days; but in case of dismissal, a statement of the grounds therefor must be forwarded to the petitioner and the commissioners in lunacy (ss. 6, 7).

Reception
order for
private
patient
—*contd.*

The order should state, if it be the fact, that the lunatic has been *personally seen* by the “judicial authority”; and, if such a statement is not contained in the order, the manager of the institution or person having charge of the patient must (unless a special certificate be sent to the commissioners) within twenty-four hours give such patient notice in writing informing him of his right to be taken before or seen by a “judicial authority” *having authority to act in the place*, not being the “judicial authority” who made the order. An omission to give the notice constitutes an indictable misdemeanour (s. 8).

If the *relieving officer* of a district or an overseer of the parish (in case there is no relieving officer) *becomes aware*, whether by notice from a medical officer or otherwise, that ANY PAUPER resident in the district or parish is deemed to be a *lunatic*, and a proper person to be sent to a lunatic asylum, he must, *within three days*, give notice of the fact to some *justice* having jurisdiction in the district or parish. Upon receipt of this notice the *justice* must, by ORDER, require the relieving officer or overseer, who gave the notice, to bring the alleged lunatic before him or some other justice having jurisdiction in the place of the alleged lunatic’s residence. The order must appoint a time and place for the bringing up of the alleged lunatic, and such time must *not exceed three days* from the time of the notice to the justice (s. 14). Where the lunatic is living in a workhouse, locally situate outside the union to which he is chargeable, a justice sitting in such union may exercise jurisdiction under this section (*R. v. Bell*) (qq). The pauper is in the workhouse for purposes of relief (cf. s. 286 (i.)), so that the workhouse must (by s. 56 of the Poor Law Amendment Act, 1844) be deemed to be within such union.

SUMMARY
ORDER for
reception of
pauper
lunatic in
asylum.
(ss. 14, 16.)

The justice before whom the alleged lunatic is brought must (a) examine the alleged lunatic, (b) call in a medical

practitioner, and (c) make such inquiries as he thinks advisable. "The relieving officer should in no way be concerned in the selection" of the medical practitioner (see Home Office Circular, May 31, 1901). If the justice is then satisfied that the person is a lunatic, and a proper person to be detained, and *if the medical practitioner signs a certificate of lunacy* in the prescribed form, the justice may by SUMMARY ORDER direct the lunatic to be detained in some named institution for the reception of the insane (s. 16). The justice must not sign such an order unless he is satisfied that the alleged pauper is in receipt of relief, *or is visited by a medical officer of the union, or is in such circumstances as to require relief for his proper care* (s. 18).

The examination may take place at the house of the alleged lunatic or elsewhere, and the justice may then proceed in all respects as if the alleged lunatic had been brought before him (s. 17).

Detention of
pauper
lunatic in
workhouse.

Before any reception order is actually made, the justice may direct that the alleged pauper lunatic be received into and detained in the *workhouse*, if satisfied that it is expedient for the welfare of the lunatic or for the public safety to take that course; and, even when an order is actually made, the justice may direct that the lunatic be temporarily detained in the workhouse until he can be removed to the asylum named. But the pauper must not, in any case, be ordered to be detained in the workhouse for more than *fourteen days* (s. 21).

Suspension of
execution of
summary
order.

It is further provided that the justice may *suspend* the execution of a *summary* reception order, *i.e.*, an order not made on *petition*, for *fourteen days*, and may, in the meantime, give such directions or make such arrangements for the proper care and control of the pauper as he considers proper (s. 19); or the lunatic may be confided to the care of his relations (s. 22).

SUMMARY
ORDER for
reception of
lunatic
wandering at
large.
(ss. 15, 16.)

Every constable, relieving officer or overseer, who is aware that a person "deemed to be a lunatic" is WANDERING AT LARGE within the district, is required to cause such person to be apprehended and brought before a *justice*. This applies *whether the alleged lunatic is a pauper or not*; and any justice, upon receiving information on oath that such a person is wandering within his jurisdiction, may, by order, require the constable

relieving officer, or overseer to apprehend him (s. 15). The justice before whom the alleged lunatic is brought must examine him, call in a medical practitioner, and make inquiries precisely as in the case of a pauper lunatic (*ante*, p. 679); and if the justice is satisfied that the alleged lunatic is a lunatic, and was wandering at large, and is a proper person to be detained, and *if the medical practitioner signs a certificate of lunacy* in the prescribed form, the justice may make a SUMMARY ORDER as in the case of a pauper lunatic (s. 16).

Lunatic wandering at large
—*contd.*

The examination may take place at the house of the alleged lunatic or elsewhere, and the justice may proceed in all respects as if the alleged lunatic had been brought before him (s. 17). The provisions as to detention in a *workhouse*, and as to the *suspension* of the order, apply as in the case of a pauper lunatic (*ante*, p. 680). The lunatic will be classified, in the institution, as a *pauper* unless and until it is ascertained that he is entitled to be classified as a *private patient* (54 & 55 Vict. c. 65, s. 3).

We have seen how the statute provides for two classes of lunatics, viz., PAUPER LUNATICS and lunatics found WANDERING AT LARGE. There is, however, further provision for alleged lunatics who, not falling within either of these two classes, are NOT UNDER PROPER CARE AND CONTROL, or are CRUELLY TREATED or neglected by any relative or other person having the care or charge of them. If a constable, relieving officer, or overseer has such a case brought to his knowledge, he must, *within three days*, give information upon oath to some *justice who is a JUDICIAL AUTHORITY* under the Act; and, if such “judicial authority” receives information, on the oath of *any person whomsoever*, that an alleged lunatic is not under proper care or control, or is so ill-treated or neglected, he *may visit* the alleged lunatic, and, whether visiting him or not, he *must direct two medical practitioners* whom he thinks fit to *visit and examine* the alleged lunatic, and to certify their opinion as to his mental state. The “judicial authority” must then proceed in the same manner, so far as possible, and he will have, as to the alleged lunatic, the same powers, as if a *petition for a reception order* had been presented by the person by whom the information has been sworn (*ante*, p. 678 (s. 13)).

SUMMARY order for reception of lunatic not under proper care or ill-treated.

(s. 13.)

Lunatic not
under proper
care or ill-
treated
—*contd.*

The lunatic will, in the first instance, be classified as a pauper, as in the case of a lunatic sent under s. 16, *supra*.

If the "judicial authority" is satisfied that the allegations in the information are true, and that the lunatic is a proper person to be detained under care and treatment, he may by SUMMARY ORDER direct him to be detained in an institution for lunatics to which, if a pauper, he might have been sent under the Act (*ib.*; 54 & 55 Vict. c. 65, s. 29).

The execution of the order may be *suspended* for not more than fourteen days, and, in the meantime, the justice may give such directions or make such arrangements for the proper care and control of the lunatic as he considers proper (s. 19). The provisions as to detention in a *workhouse* also apply, as in the cases of pauper lunatics and of lunatics found wandering at large (*ante*, p. 680).

SUMMARY
ORDER of
justice as to
lunatic in a
workhouse.

No person is permitted to remain in a *workhouse* as a *lunatic* (unless detained by order under the Act) without a certificate from the medical officer that such person is a lunatic, and a proper person to remain in the workhouse, and that the accommodation of the workhouse is adequate. And even if such certificate be obtained, the lunatic cannot be detained for more than *fourteen days*, unless a SUMMARY ORDER (with medical certificates attached) has been obtained from a justice having jurisdiction in the place where the workhouse is situate. Such an order is made on the application of a relieving officer of the union, supported by a certificate from the medical officer of the union and a certificate under the hand of a medical practitioner who is not an officer of the workhouse (s. 24; 54 & 55 Vict. c. 65, s. 5).

Order on
guardians to
pay fee of
medical
practitioner
and other
expenses.

It should be mentioned that whenever a justice directs the examination of a lunatic or alleged lunatic (whether a pauper or not) by a *medical practitioner*, such justice, or any other justice having jurisdiction in the place where the examination is made, may make an order upon the *guardians* for the payment of such reasonable remuneration to the medical practitioner, and of all such *other reasonable expenses* in and about the examination and inquiry, as the justice may think proper, including also the expenses of carrying the order into

effect (s. 285). A section *in pari materiâ* was held to cover *police* expenses incurred in the conveyance of the lunatic prior to committal (*R. v. Delvin Union*) (*q*₃).

When a pauper lunatic is sent to an institution for lunatics, an ORDER may be made upon the guardians of the union to which he is chargeable for payment of the reasonable charges of his *lodging, maintenance, medicine, clothing, and care*. Such an order may be made by the justice who sends the lunatic to the institution, or by two justices of the place where the institution is situate, or from which the lunatic has been sent, or by any two justices who are visitors of the institution (s. 287). An order of this nature may be made *ex parte* and is not subject to appeal (*ib.* (iii.)), presumably because (although the lunatic is *prima facie* chargeable to the union from which he is sent) the guardians may, if need be, obtain an order as to his *settlement* under ss. 288, 289, &c., *post*, p. 687.

Order for maintenance of pauper lunatic.

If it appears to a justice that a lunatic, chargeable to any union or local authority, has real or personal property more than sufficient to maintain his family, the justice may ORDER the relieving officer or the treasurer of the local authority to seize and sell such portion of the personal property and receive such rents as he may think necessary to pay for the expenses of maintenance and other incidental expenses incurred in relation to the lunatic (s. 299). In making such an order, the justice does not sit as a court of summary jurisdiction (*ante*, p. 161).

Application of lunatic's property. (s. 299.)

Lunatics sent to an institution under s. 13 (*ante*, p. 681), or s. 16 (*ante*, p. 680), are, as we have seen, classified, in the first instance, as "pauper" (by virtue of s. 3 of the Lunacy Act, 1891); but s. 299 is not confined to *pauper* lunatics, so that an ORDER can be made thereunder although the patient has been subsequently classified as "private": see (*e.g.*), *R. v. Fulham Guardians* (*q*₄), where an order was made on the application of the asylums committee of the London County Council in respect of money in the hands of the guardians.

Under s. 327 APPEAL lies against orders (other than settlement and maintenance orders); and, by s. 301,

Appeal.

(*q*₃) [1908] 2 Ir. R. 15 (K. B. D.).

(*q*₄) [1909] 2 K. B. 504; 78 L. J. K. B. 1081; 7 L. G. R. 881; 73 J. P. 397.

against the *refusal* of orders under ss. 285—299. See also HUSBAND AND WIFE, *ante*, p. 562, and POOR, *post*, p. 785.

Offences.

OFFENCES.

A large number of OFFENCES are defined by the Act, and, unless it is otherwise expressly provided, proceedings against any person for offences against the Act may be taken—

(a) By the secretary of the commissioners upon their order *for any offence* ;

(β) By the clerk of the visitors of any licensed house for an offence committed within their jurisdiction ;

(γ) By the clerk of the visiting committee of an asylum for any offence by any person employed therein ;

But proceedings cannot be taken except by a secretary of state, or under an order of the commissioners, or of visitors, or with the consent of the attorney- or solicitor-general (ss. 325, 328). And see offence (21), *post*, p. 686.

Offences punishable SUMMARILY.

The following, amongst other offences, may be dealt with *summarily*, the maximum PENALTY (recoverable by *distress*, and, in default, imprisonment, *without* hard labour, according to scale, see p. 111), being inserted in brackets. As to the *application* of penalties, see s. 326.

Offences by manager.

(1) Manager of an institution *omitting to forward letters* written by patients addressed to the lord chancellor, the commissioners, or other specified persons (20*l.*) (s. 41).

(2) Manager or principal officer of an institution *refusing, preventing, or obstructing the admission of a person authorised by the commissioners or visitors to visit a patient* (20*l.*) (s. 47).

Omissions by clerk of peace.

(3) Clerk of peace *omitting to publish and send to the commissioners the list of visitors within the time limited* (2*l.*) (s. 177).

(4) Clerk of peace *omitting to send to the commissioners within seven days a copy of licence granted by justices for licensed houses* (2*l.*) (s. 215).

(5) Clerk of peace *failing to notify transfer of licence to the commissioners within three days* (2*l.* daily penalty) (s. 218).

Offences by licensee or superinten- dent.

(6) Licensee *receiving into his licensed house more persons than he is licensed for, or failing to comply*

with the regulations of the licence as to *the sex or class of the patients* (50*l.* for each patient received contrary to the licence) (s. 220).

- (7) Superintendent of a hospital (*i.e.*, an institution of a charitable nature registered by the commissioners), in case the regulations are not sent to the commissioners or hung up as required (20*l.*) (s. 232).
- (8) Obstructing a person (other than a commissioner or visitor) authorized in writing by the lord chancellor or a secretary of state to visit a lunatic or inspect his place of confinement (20*l.*) (s. 321). And see offence (24). Obstructing authorized visitor.
- (9) Manager, officer, or servant of an institution wilfully *permitting*, assisting in, or conniving at the *escape* of a lunatic (20*l.*, and not less than 2*l.*, but cf. also *ante*, p. 105) (s. 323). Conniving at escape.
- (10) Failing to send to the commissioners, or any other person, any return, report, plan, &c., required by any Act relating to lunacy, where no penalty is specifically imposed (10*l.* for every day or part of a day during which default continues) (s. 320). The burden of proof that the document was sent lies on the defendant (s. 329). Failure to send returns, &c.
- And see Nos. (19), (24), and (25).
- APPEAL lies to quarter sessions against "an order of justices" (s. 327).
- The following OFFENCES are *misdemeanours*, and justices have not (unless the contrary is expressly stated) any power to deal summarily with the charge. Offences punishable ON INDICTMENT.
- (11) Wilfully applying *mechanical means of restraint* without necessity, or omitting to obtain a certificate stating the reasons for such restraint, or omitting to record the fact of such restraint (s. 40). Abuse of means of restraint.
- (12) Person having charge of a *single patient* (not found lunatic by inquisition) failing to obey directions of the commissioners as to medical attendance on such patient (s. 44).
- (13) Person, served with an order of the commissioners to discharge a patient, detaining him after the time stated in the order (s. 76). Disobeying order to discharge.
- (14) Wilfully supplying the commissioners or justices with untrue or *incorrect information in order to obtain a licence* or the renewal of a licence (s. 214). Frauds to obtain licence.

Indictable
offences
—*contd.*

Offences by
superinten-
dent of
hospital.

Receiving
patient
irregularly or
in unlicensed
house.

Receiving
two or more
lunatics.

Wilful mis-
statements,
&c.

False entries.

(15) Detaining two or more lunatics in a house after the lapse of two months from the expiration or revocation of the license (s. 222).

(16) Superintendent of a hospital detaining or receiving a lunatic contrary to the provisions of the Act or to the terms of registration (s. 231).

(17) Superintendent of a hospital knowingly permitting a lunatic to be detained in a part of the hospital not licensed by the commissioners (s. 233).

(18) Superintendent of a hospital, in case lunatics are detained after the date appointed for closing the hospital (s. 237).

(19) Any person receiving or detaining *an alleged lunatic* in an institution, except under the provisions of the Act; or, *for payment*, taking charge of, or receiving to board or lodge, or detaining *an alleged lunatic* in an unlicensed house except under the provisions of the Act (s. 315) (i.)). The latter offence is also punishable summarily with a penalty of 50*l.*

Except under the provisions of the Act, no person may receive or detain *two or more lunatics* in any house which is not an institution for lunatics or a work-house (s. 315) (ii.) (iii.). The fact that *no payment* was made would not constitute a defence under these two sub-sections; nor would an honest and reasonable, but mistaken, belief that the patients were *not lunatics*, i.e., persons whose minds were so affected by disease as to make it necessary for their own good to put them under restraint (*R. v. Bishop*) (*q*₅).

(20) The manager of a hospital or licensed house failing to send certain documents to the commissioners, or failing to give them notice of the removal, discharge, or death of a patient (s. 316).

(21) Any person wilfully making a *material misstatement* in a *petition*, *reception order*, *medical certificate*, or *report* under the Act (s. 317). In addition to the commissioners, or the Attorney-General, the director of public prosecutions may order proceedings under this section.

(22) Any person knowingly making a *false entry* in any

- book, return, &c., which he is required to keep (s. 318).
- (23) Manager of an institution for lunatics, or person having charge of a single patient, *failing to give coroner notice of death* of patient (s. 319). Failing to notify coroner.
- (24) Person obstructing a commissioner or visitor (s. 321). The offender is, too, on *summary conviction*, liable to a penalty of 50*l*. Obstruction.
- (25) Manager, officer, nurse, servant, &c., of an institution, *or any person having charge of a lunatic, ill-treating or wilfully neglecting patient* (s. 322). The offender is, too, on *summary conviction*, liable to a penalty of 20*l*., and not less than 2*l*. (cf. *ante*, p. 105). Ill-treatment of lunatic by any person in charge.
- (26) Manager, officer, nurse, attendant, or other person employed in an institution, or person in charge of or attending a single patient, *carnally knowing, or attempting to have carnal knowledge of a female patient* (s. 324). Consent on the part of the patient will afford no defence. And see *ante*, p. 365. Abuse of female patient.

Settlement of Lunatic.

When a pauper lunatic is confined in an asylum, any *two justices* for the county or borough (i.) in which the asylum is situate, *or* (ii.) to which the asylum wholly or in part belongs, *or* (iii.) from any part of which the lunatic has been sent, may *at any time* inquire into his SETTLEMENT; and if, on satisfactory evidence, they are in a position to adjudge the settlement, they must ORDER the guardians of the *union*, to which he is chargeable, to pay the expenses incurred or to be incurred in respect of the examination, removal and maintenance (past or future) of the lunatic, limiting, however, any arrears to a period of twelve months (ss. 288, 289). As to APPEAL, see ss. 301, 303—311; and *R. v. London JJ. (r)*. In an action for the recovery of such expenses (under s. 314 (ii.)), the adjudication of the justices is *conclusive* as to the settlement (*Suffolk County Asylum v. Nottingham Union*) (s). If the pauper has acquired a fresh settlement since the adjudication, the guardians must apply for a fresh adjudication.

(r) (1896) 60 J. P. 456.

(s) (1905) 69 J. P. 120; 3 L. G. R. 362.

Where no
settlement is
ascertainable.

Where, however, *no settlement* in England or Wales can be ascertained, and the lunatic was sent "from a quarter sessions borough which is free from contributing to the payment of the expenses of pauper lunatics chargeable to the county in which the borough is situate, or from a place not in such a borough," then the relieving officer of the union from which the lunatic is sent must give to the clerk of the "local authority" (cf. s. 240), within whose area the lunatic is found, ten days' notice to appear before *two justices*. The justices, who must have jurisdiction within such area, may adjudge the lunatic to be chargeable to the "local authority" and order the treasurer thereof to pay the incidental expenses and expenses of maintenance (past or future), limiting any arrears to twelve months. The justices may delay the making of the order until further inquiry is made (s. 290). There is no appeal, but if a settlement be afterwards adjudged, the "local authority" may obtain an order for re-imbursement (s. 291). An appeal against the *refusal* of an order is given by s. 301.

Criminal Lunatics.

Criminal
Lunatics.

Sometimes it appears that a crime has been committed by a person alleged to have been insane at the time when the act was done, or alleged to have become insane since the commission of the crime and before the date of the trial, and, consequently, to be unfit to plead. When the offence is *indictable*, it is no part of the duty of the justices to decide whether or not the allegation of insanity is well founded; that issue can only be determined by a jury. But it may be mentioned that every man is presumed to be sane and responsible for crimes committed by him until the contrary be proved: and, in order to establish a defence of insanity, it must be shown that the party accused "was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong" (*M'Naghten's Case* (t)). There are elaborate statutory provisions as to criminal lunatics; see the Trial of Lunatics Act, 1883 (46 & 47 Vict. c. 38);

(t) (1843) 10 Cl. & Fin. 200; 4 St. Tr. N. S. 847.

47 & 48 Vict. c. 64 and the Criminal Appeal Act, 1907 (7 Edw. 7, c. 23, s. 5 (iv.)).

MALICIOUS INJURIES TO PROPERTY.

In proceedings under the Act relating to malicious damage to property (24 & 25 Vict. c. 97), actual malice conceived against the owner of the property injured is not a necessary ingredient in the offence (s. 58). It is sufficient if the act is wilfully and wantonly done, without lawful excuse, and with intent to commit an injury or in reckless disregard of probable consequences (cf. *R. v. Welch (u)*; *Eley v. Lytle (v)*). And it is not a sufficient excuse to allege that the resulting mischief was wider than the perpetrator either intended or expected.

Actual malice need not be proved.

It must, however, be established that there was some *actual appreciable damage*; while the fact that a *civil trespass* has been committed is *not* in itself sufficient to justify a conviction in the absence of proof of an intent to injure *property* or of a wanton and reckless disregard of consequences (cf. *R. v. Pembrton (c)*, in which case a conviction was quashed where a stone thrown by the accused at some people accidentally broke a window). See also *R. v. Rutter (xx)*, where a conviction was quashed on a finding that the prisoner had acted "in ignorance": it appeared that, before quitting his cottage, he had cut down trees planted by himself in the garden, being under the impression that he was entitled to do so.

But there must be actual damage and an intent to injure;

In case of an offence against s. 52 (OFFENCE (f), *post*, p. 692), it is, however, sufficient if the act causing damage be wrongful and *wilful*, although not done with malicious intent to cause loss or damage to any person. Where the servant of a milkman by accident upset some of his master's milk and added water to make up the quantity, it was held that he had not committed an offence, as there was no intent to injure the owner of the milk. (*Hall v. Richardson (y)*). But *Hall v. Richardson*

except in case of OFFENCE (f), *post*, p. 692.

(u) (1876) 45 L. J. M. C. 17; 40 J. P. 183.

(v) (1886) 50 J. P. 308.

(x) (1874) L. R. 2 C. C. R. 122; 43 L. J. M. C. 91; 38 J. P. 454.

(xx) (1908) 25 T. L. R. 73; 73 J. P. 12.

(y) (1890) 54 J. P. 345.

was afterwards expressly disapproved by a Court consisting of seven judges (*Roper v. Knott*) (z).

As to *claim of right*, see *ante*, pp. 88—91; and in case of an information under s. 52, see OFFENCE (f), *post*, p. 693.

Apprehension
of offender.

A person “found committing” an offence against this Act may be immediately apprehended without warrant by any constable, or by the owner of the property injured, or by the servant of such owner (s. 61); see, too, *post*, p. 694.

Offender may
himself be in
possession of
the property.

And the offence may be committed, although the offender be himself *in possession* of the property injured; as, *e.g.*, where a tenant is in possession of the house, fixtures, or gardens demised to him by the owner (s. 59). And see OFFENCE (g), *post*, p. 694.

Offences Triable Summarily.

Conviction
bars subse-
quent pro-
ceedings for
the damage.

The following offences may be tried before justices, or before a single justice; but, in case of trial before a single justice, the power of inflicting punishment is limited (*ante*, p. 12). And when a defendant has paid the sum adjudged to be paid, or suffered the imprisonment awarded for non-payment, or is discharged from conviction upon making due satisfaction for damages and costs (as he may be in case of a *first* conviction, *ante*, p. 169), it must be remembered that he will be released from all further proceedings, whether by action or otherwise, for the same offence (24 & 25 Vict. c. 97, s. 67).

Recovery of
penalties.

The maximum PENALTIES are stated below, and, in default of *payment*, imprisonment with or without hard labour, may be imposed, according to scale (p. 111).

When there
are joint
defendants.

Where several persons are convicted jointly, each of them may be adjudged to pay the amount of compensation for the injury, but no more than the actual amount of injury must be paid to the party aggrieved, the remainder going, as though a penalty, to the county or borough treasurer (s. 64).

Appeal.

APPEAL lies to the quarter sessions where the sum adjudged to be paid exceeds 5*l.*, or where peremptory imprisonment is ordered, or where the conviction is before *one* justice only (s. 68).

(z) [1898] 1 Q. B. 868; 67 L. J. Q. B. 574; 78 L. T. 594; 46 W. R. 636; 62 J. P. 375.

- (a) Destroying or damaging any *tree, sapling, shrub, or underwood*, wherever growing, *to the amount of 1s.* But if the damage exceeds *5l.*, or if (when the tree, &c., is growing in a park, garden, orchard, avenue, or ground adjoining or belonging to a dwelling-house) the damage exceeds *1l.*, the offence is *indictable* (see OFFENCE (k), *post*, p. 695). [FINE of *5l.* in addition to the damage; or, IMPRISONMENT, with or without hard labour, for THREE MONTHS.] (24 & 25 Vict. c. 97, s. 22.)

Trees, shrubs, &c., to amount of 1s. *wherever growing.*

For a SECOND offence, the punishment is TWELVE MONTHS, with or without hard labour; but, if the previous conviction is to be charged, the accused must be given the OPTION OF TRIAL BY JURY: as to the procedure to be adopted, see *ante*, p. 65.

A third offence is an indictable misdemeanour not triable summarily.

If the damage be under *1s.*, the defendant must be charged with OFFENCE (f). See *ib.* s. 53, *post*, p. 693.

- (b) Destroying, or damaging with intent to destroy, any *plant, root, fruit, or vegetable production*, growing in any *garden, orchard, nursery, greenhouse or conservatory*. [FINE of *20l.* in addition to the damage; or, IMPRISONMENT, with or without hard labour, for SIX MONTHS.] (*Ib.* s. 23.)

Plants, &c., growing in gardens, orchards, &c.

The accused must, at the outset, be given the OPTION OF TRIAL BY JURY (*ante*, p. 63).

A second offence is an indictable felony not triable summarily.

- (c) Destroying, or damaging with intent to destroy, any *cultivated root or plant* used for the food of man or beast, or for medicine, or for distilling, or for dyeing, or in the course of any manufacture, and growing in land open or enclosed, but *not being a garden, orchard, or nursery-ground*. [FINE of *1l.* in addition to the damage; or, IMPRISONMENT, with or without hard labour, for ONE MONTH. For default in payment of fine and compensation the imprisonment must not exceed one month.] (*Ib.* s. 24.)

Cultivated plants, &c., growing elsewhere.

For a SECOND offence, the punishment is *six months*, with or without hard labour; but, if it is sought to charge a previous conviction, the accused must be given

the OPTION OF TRIAL BY JURY: as to the procedure to be adopted, see *ante*, p. 65.

It will be observed that the word "fruit" does not occur in this section.

Fences, &c.

(d) Breaking or destroying any *fence, wall, stile, or gate*, or any part thereof. [FINE of 5*l.* in addition to the damage.] (24 & 25 Vict. c. 97, s. 25.)

For a *second offence*, the punishment is *twelve months*, with or without hard labour; but the accused must be given the OPTION OF TRIAL BY JURY: as to the procedure to be adopted, see *ante*, p. 65.

Claim of right.

Where the defendant knocked down the fence in vindication of a right of way, it was held that he ought not to be convicted although he pulled down more than was necessary to make a free passage (*Evison v. Marshall*) (a). But, where proceedings were taken under s. 51, OFFENCE (t), and the destruction was manifestly wanton, the decision was otherwise. See *R. v. Clemens* (b), *post*, p. 694.

Telegraphs.

(e) Destroying, injuring, or removing (or attempting to destroy, injure, or remove) any *telegraph*, or any battery, wire, post, &c., connected therewith, or obstructing the conveyance or delivery of any telegraphic message. [FINE of 10*l.*; or, IMPRISONMENT, with or without hard labour, for THREE MONTHS.] (*Ib.* ss. 37, 38.)

But, if the full offence is charged, it must be prosecuted *by indictment* as a misdemeanour unless the justice thinks such a course inexpedient.

Wilful or malicious damage to any other property to amount not exceeding 5*l.*

Form of Information, *post*, p. 1222.

(f) Wilfully or maliciously causing damage, injury, or spoil to or upon *any real or personal property whatsoever*, either of a public or private nature, for which "NO PUNISHMENT is by this Act hereinbefore provided." [FINE of 5*l.*, in addition to damage not exceeding 5*l.* in amount; or IMPRISONMENT, with or without hard labour, for TWO MONTHS.] (*Ib.* s. 52.)

If the damage done exceeds 5*l.* the offence is *indictable* and cannot be tried summarily. See OFFENCE (t), *post*, p. 696.

It has been already noticed that, under this section, a conviction may take place although the injury be not

(a) (1868) 32 J. P. 691.

(b) *Post*, p. 694.

actually *malicious* if it be wrongful and wilful (*ante*, p. 689); but observe that the section applies only to damage occasioned to the *realty itself* and not to damage to the product of the realty (*Gardner v. Mansbridge*) (c); though (by s. 53) it is expressly extended to damage to trees, saplings, shrubs or underwood of less extent than 1s. (cf. OFFENCE (a); and see *Hamilton v. Bone* (d)). The Act, therefore, does not provide at all against the destruction of or damage to *uncultivated* roots or plants in a field, e.g., mushrooms growing spontaneously, blackberries, wild primroses, &c. But a Divisional Court (without either overruling or distinguishing *Gardner v. Mansbridge*) held a defendant rightly convicted *under this section* who had persisted in trespassing upon a grass field, and had damaged the grass to the supposed extent of 6d. (*Gayford v. Chowler*) (e). As to *cultivated* roots, &c., see OFFENCE (c); as to plants, &c., in gardens, see OFFENCE (b); and as to trees, &c., growing anywhere (if the damage exceeds 1s.), see OFFENCE (a).

This section, s. 52, does not apply where the defendant acted under a *fair and reasonable supposition* that he had a right to do the act complained of, nor to any trespass, not being wilful and malicious, committed in *hunting, fishing, or in the pursuit of game*. But it would appear that, if the defendant did not act under a *fair and reasonable* supposition that he had a right to do the act complained of, it would not avail him that he claimed such right *bonâ fide*; the express provision of the statute having been held to override the general doctrine that a *bonâ fide* claim of right is sufficient to oust the jurisdiction of justices, although not perhaps a "fair and reasonable" claim (cf. *White v. Feast*) (f). So, again, if the supposed right could have no existence in point of law, the supposition of its existence, of course, could not be "reasonable" (*Brooks v. Hamlyn*) (g). Thus, where a golf club had caused the removal from lamp-posts of a number of notice boards, requesting persons "to refrain

Proviso as to
claim of right
&c., under
s. 52.

(c) (1887) 19 Q. B. D. 217; 57 L. T. 265; 35 W. R. 809; 51 J. P. 612.

(d) (1888) 52 J. P. 726.

(e) [1898] 1 Q. B. 316; 67 L. J. Q. B. 404; 78 L. T. 42; 62 J. P. 165.

(f) (1872) L. R. 7 Q. B. 353; 41 L. J. M. C. 81; 26 L. T. 611; 36 J. P. 436.

(g) (1899) 79 L. T. 734; 63 J. P. 215.

from playing golf on or across the public highway," it was contended that the boards constituted a slander upon the title of the club to play over the roads on which the posts were placed and the common which the roads crossed. But the court held that the right to remove, claimed on behalf of the club, was not one known to the law, inasmuch as the lamp-posts did not belong to the persons who had granted the licence to play, and the boards did not constitute a nuisance such as the club might have had a right to abate (*Croydon Rural Council v. Cowley*) (gg). If the defendant has done *more damage* than he could have "reasonably supposed" to be necessary for the assertion of his rights, he ought to be convicted (cf. *R. v. Clemens* (h); and *ante*, pp. 90, 91).

As to killing, maiming, or wounding dogs, birds, and other animals, see *ante*, p. 255.

Indictable Offences.

Apprehension
of offender.

The following OFFENCES are triable only upon *indictment*, unless the accused is under sixteen years of age. All are felonies except (g), (n), (p), and (t); and, where the offence is a *felony*, a constable may arrest without warrant any one whom he finds lying or loitering *during the night* (i.e. between 9 P.M. and 6 A.M.) in any highway or other place and whom he reasonably suspects of having committed or being about to commit such offence (s. 57). If actually committing the offence, the offender may, as we have seen, be apprehended without warrant, whether the offence be a felony or a misdemeanour (p. 690).

Tenants
damaging
demised
premises.

(g) *Tenants* in possession of buildings *demolishing* them, or any part of them, or *severing fixtures* from the freehold. [Fine or imprisonment, or both.] (s. 13.) As to other demised property, see s. 59 (p. 690).

Woven goods
and weaving
machinery.

(h) Destroying or damaging *woven goods* in the loom or frame; or destroying or damaging the *machinery* connected with the process of *weaving*; or forcibly

(gg) (1909) 100 L. T. 441; 25 T. L. R. 306; 73 J. P. 205; 7 L. G. R. 603.

(h) [1898] 1 Q. B. 556; 78 L. T. 204; 67 L. J. Q. B. 482; 46 W. R. 416.

entering any house or other building with intent to commit such an offence. [Penal servitude for life; triable only at assizes.] (s. 14.)

- (i) Destroying or damaging machinery intended for agricultural operations, or any manufacturing operations other than those referred to under offence (h). [Penal servitude for seven years.] (s. 15; cf. *R. v. Fisher* (i).) Machinery in other manufactures.

- (j) Cutting or destroying *hopbinds* on poles in a plantation of hops. [Penal servitude for fourteen years.] (s. 19.) Hopbinds.

- (k) Destroying or damaging any *tree, sapling, shrub, or underwood*, growing in a *park, pleasure ground, garden, orchard or avenue*, or ground *adjoining or belonging to a dwelling-house* where the injury *exceeds 1l.*; or, growing elsewhere, if the injury *exceeds 5l.* [Penal servitude for five years.] (ss. 20, 21.) Trees, &c., growing in gardens, &c., if damage exceeds 1l.; or elsewhere if damage exceeds 5l.

If the injury exceeds 1l. or 5l., as the case may be, it is immaterial that the damage was done to several trees and not to one tree, provided that it was all done at one time (cf. *R. v. Shepherd*) (k).

See also as to *third and subsequent offences* where the injury is of less extent, OFFENCE (a) (*ante*, p. 691).

- (l) Causing water to run into mines; obstructing air-ways, levels, shafts, &c.; *or*, destroying or damaging engines, tackle, or other appliances connected with the working of mines. [Penal servitude for seven years.] (ss. 28, 29.) Mines and machinery connected therewith.

- (m) Destroying or damaging sea-walls, river banks, the walls of reservoirs, &c., so as to endanger lands or buildings being damaged by flooding; *or*, destroying quays, wharves, locks, towing paths, sluices, &c., connected with harbours, docks, reservoirs, or navigable rivers or canals. [Penal servitude for life; triable only at assizes.] (s. 30.) Sea-walls, quays, sluices, &c.

- (n) Destroying or damaging *dams, sluices, &c.*, with intent to take or destroy the *fish in fishponds*, or in waters where there is a private right of fishery; *or*, with a similar intent, putting *lime* or other noxious Dam of fish-pond; liming water to kill fish, &c.

(i) (1866) L. R. 1 C. C. R. 7; 35 L. J. M. C. 57; 13 L. T. 380.

(k) (1868) L. R. 1 C. C. R. 118; 37 L. J. M. C. 45; 17 L. T. 482;

material in such *ponds*, or waters, or in a salmon river ; *or*, destroying the dam or floodgate of a mill-pond, reservoir, or pool. [Penal servitude for seven years.] (s. 32 ; 36 & 37 Vict. c. 71, s. 13.) And see *ante*, p. 479.

Bridges,
aqueducts,
and viaducts.

- (o) Destroying a *bridge*, *aqueduct*, or *viaduct* over or under which any highway, railway, or canal passes ; *or*, doing any injury with intent and so as to render such bridge, aqueduct, or viaduct, or the highway, railway, or canal, dangerous or impassable. [Penal servitude for life ; triable only at assizes.] (s. 33.)

As to placing stones, &c., on a railway line with intent to upset a railway engine, see *post*, p. 868.

Books,
pictures,
statues, &c.,
in public
buildings,
churches, &c.

- (p) Destroying or damaging any book, work of art, or curiosity in a museum, gallery, library, &c., open to the public, whether on payment or otherwise ; *or*, any picture, statue, monument, glass, ornament, &c., in a place of divine worship, or building belonging to the Crown or a public body, or in a street or public place ; *or*, any statue or monument exposed to public view, or the railing or fence thereof. [Imprisonment for six months.] (s. 39.)

Ships.

- (q) Damaging (otherwise than by fire, gunpowder, or other explosive) any *ship* or *vessel*, whether in a finished state or not, with intent to destroy the same or render it useless. [Penal servitude for seven years.] (s. 46 ; and see *ante*, p. 273.)

Exhibiting
false lights,
&c., to destroy
ships.

- (r) *Masking* or *removing lights* or *signals*, or exhibiting false lights or signals with intent to bring a *ship* or *boat* into danger ; *or* doing any act tending to the immediate loss of a ship or boat and which is not specially provided for. [Penal servitude for life ; triable only at assizes.] (s. 47.)

Removing
buoys, &c.

- (s) Removing, altering, or concealing any boat, buoy, or mark intended for the guidance of seamen or the purpose of navigation. [Penal servitude for seven years.] (s. 48.)

Damaging
any other
property to
an amount
exceeding 5*l*.

- (t) Causing damage, injury, or spoil to or upon *any real or personal property whatsoever*, either of a public or private nature, for which no special punishment is provided, and where the damage, injury, or spoil *exceeds 5*l**. [Imprisonment for two

years, or penal servitude for five years if the offence was committed by night.] (s. 51.)

- (u) It is specially provided that any person who unlawfully and *maliciously* cuts or injures any *electric line or work* with intent to cut off any supply of *electricity* shall be guilty of felony. [Penal servitude for five years.] (45 & 46 Vict. c. 56, s. 22.)

Injuring works with intent to cut off supply of ELECTRICITY.

See also ARSON, *ante*, p. 271; ANIMALS, *ante*, p. 255; RAILWAYS, *post*, p. 868; and RIOTS, *post*, p. 877.

MAN-TRAPS.

No penalty attaches to the employment of a spring-gun or man-trap *inside one's dwelling-house* and for the protection thereof at any time between the setting and rising of the sun; nor is it illegal to set traps such as are usually set for the destruction of *vermin*. Otherwise, it is an *indictable* misdemeanour, punishable with penal servitude, to set or cause to be set a spring-gun, man-trap, or other engine calculated to destroy human life or to inflict grievous bodily harm, with intent that or whereby the same may destroy or inflict grievous bodily harm upon a trespasser or other person coming in contact with it. It is, moreover, a like offence to permit such an engine to continue so set on premises which are in one's possession after the setting of the traps (24 & 25 Vict. c. 100, s. 31).

Setting spring-guns or man-traps.

MARGARINE, MARGARINE-CHEESE, AND BUTTER.

"Margarine" is defined to mean any article of food, whether mixed with butter or not, *which resembles butter* and is not *milk-blended* butter (7 Edw. 7, c. 21, s. 13). The definition in the Act of 1887 was held to cover a compound made of nuts, containing no animal fat and unknown when that Act was passed (*Wilkinson v. Alton*) (l). The word "butter" is used in the Margarine Acts as meaning the substance usually known as butter, made exclusively from milk or cream, or both, with or without salt or other preservative, and with or without the addition of colouring matter (50 & 51 Vict. c. 29, s. 3).

Meaning of "margarine" and "butter."

(l) (1908) 99 L. T. 119; 72 J. P. 252; 6 L. G. R. 544.

Meaning of
"margarine-
cheese" and
"cheese."

The provisions of the Act last cited extend to "margarine-cheese" (*i.e.*, any substance, whether compound or otherwise, which is prepared in imitation of cheese, and which contains fat not derived from milk), and apply accordingly with the substitution of "margarine-cheese" and "cheese" for "margarine" and "butter." The word "cheese" means the substance usually known as cheese, containing no fat derived otherwise than from milk (62 & 63 Vict. c. 51, ss. 5, 25). As to MILK-BLENDED BUTTER, see *post*, p. 704.

Margarine,
&c., must be
consigned as
such.

When imported into this country, or forwarded from one part thereof to another in a public conveyance, margarine or margarine-cheese must be duly consigned as such; and if an officer of the customs, an officer or constable authorized under the Sale of Food and Drugs Act, a medical officer of health, an inspector of nuisances, or (except in London) an inspector of weights and measures, suspects that this has not been done, he may take samples from packages in transit (50 & 51 Vict. c. 29, s. 8; 7 Edw. 7, c. 21, s. 12). The person taking a sample of margarine or margarine-cheese forwarded by public conveyance must forward, by registered parcel or otherwise, a portion of the sample marked, and sealed, or fastened up, to the consignor if the name and address of the latter appear on the package (62 & 63 Vict. c. 51, s. 10).

Taking of
samples in
transit.

As to the IMPORTATION of margarine, milk-blended butter, &c., see also *ante*, p. 238.

Procedure
under the
Margarine
Acts.

Taking of
samples on
exposure for
sale.

The proceedings under the Margarine Acts of 1887 and 1907 are, generally, the same as those prescribed by the Sale of Food and Drugs Acts, 1875 and 1899 (see 50 & 51 Vict. c. 29, s. 12; 7 Edw. 7, c. 21, s. 11 (ii.)); but an authorized officer may, *without going through the form of purchase*, take for the purposes of analysis samples of any butter or cheese, or substances purporting to be butter or cheese, which are *exposed for sale and not marked* as required by the Act; and any such substance not so marked is to be presumed to be exposed for sale as butter, &c. (50 & 51 Vict. c. 29, s. 10). With the exception just noted, however, the provisions of the Acts of 1875 and 1899 as to the course to be adopted when a sample is obtained *with the intention of submitting it to analysis* must be observed (*ante*, pp. 211—216). But the

Acts are *not* confined in their operation to cases where the article is obtained *for test purposes* (*Buckler v. Wilson*) (*m*); they are applicable, *e.g.*, to contracts for delivery extending over a considerable time, &c., in which case the provisions as to notification and division with a view to analysis do not apply (cf. *ante*, p. 212).

We now pass to the special and stringent provisions of the Acts relating to the manufacture, importation and sale of *margarine* and *margarine-cheese*. Every person dealing in *margarine*, &c., whether as a manufacturer, importer, consignor, consignee, commission agent, or otherwise, must conform to the following regulations—

- (a) Every *package containing margarine, &c.*, whether open or closed, must be **BRANDED OR DURABLY MARKED** “*margarine*” or “*margarine-cheese*” on the top, bottom, and sides thereof in printed capital letters, not less than *three-quarters of an inch square*. The brand or mark must be *on the package itself*, and not solely on a label, ticket, or other thing attached thereto. All *margarine-cheese* sold or dealt in *otherwise than by retail* must either be inclosed in packages so marked or be itself conspicuously branded with the words “*margarine-cheese*.”

Tubs, open at the top, at the back of the counter in the shop of a dealer in *margarine*, were held to be “*packages*” within the meaning of these sections (*McNair v. Horan*) (*n*).

- (b) If the *margarine, &c.*, be *exposed for sale by retail*, there must be attached to each parcel thereof so exposed a **LABEL** with “*margarine*” or “*margarine-cheese*” printed in capital letters not less than *one and a half inches square*, and so as to be clearly visible to the purchaser.

REGULA-
TIONS.
50 & 51
Vict. c. 29,
s. 6; and—
62 & 63 Vict.
c. 51, ss. 5, 6.
Packages to
be branded.

Label on
parcel
exposed for
sale by retail.
**Form of
Information,**
post, p. 1226.

“*Exposed for sale*” means exposed in some way so that the *margarine, &c.*, or the package containing it is visible to the purchaser; and, therefore, a label need not be attached if the *margarine, &c.*, be stored in a cellar or placed behind a screen so that it could not in any sense be seen by customers in the shop (*Crane v.*

(*m*) Cited *ante*, p. 211.

(*n*) (1904) 91 L. T. 555; 68 J. P. 518; 20 Cox, 729; 2 L. G. R. 1239.

REGULA-
TIONS—*contd.*

Lawrence (o). But if the margarine, &c., were in packages exposed on the counter, or on a shelf in the shop, the label would be required, although the substance were so wrapped up as not to be itself visible to the customers (*Wheat v. Brown*) (p). Margarine in a refreshment house, which is sold in conjunction with bread or other articles, is not "exposed for sale by retail" within this section (*Moore v. Pearce's, &c. Ltd.*) (q). See as to *outer* wrappers, *Toler v. Bischof* (r).

Where six separate pounds of margarine, each partially covered with paper, were placed together in a shop window in the form of a pyramid, a single label, at the base of the pyramid or triangular group and extending across the whole of the bottom portion of the three lowest pieces, was held to be a sufficient compliance with the statute (*Parkinson v. McNair*) (s).

On sale by
retail.
wrapper to be
marked in
print.

**Form of
Information,**
post, p. 1226.

(c) If the margarine, &c., is *sold by retail*, except in packages branded or marked as above, the person selling must deliver it to the purchaser *in a paper wrapper* on which the word "margarine" or "margarine-cheese" is printed in capital *block* letters not less than *half an inch* long and distinctly legible, and *no other printed matter may appear on the wrapper* (50 & 51 Vict. c. 29, s. 6; 62 & 63 Vict. c. 51, ss. 5, 6).

Restriction on
quality.

(d) No person may *manufacture, sell, expose for sale, or import* any margarine, the fat of which contains *more than ten per cent. of butter fat* (62 & 63 Vict. c. 51, s. 8).

Onus on
defendant.

Discharge on
proof of
warranty or
invoice.

Every one who has in his possession for sale, *or* deals with, *sells, or* exposes for sale, *or* offers for sale any quantity of margarine, &c., contrary to the provisions of the Acts, is liable to conviction for an OFFENCE unless he can satisfy the court—

(a) That he purchased the article as butter or cheese;

(o) (1890) 25 Q. B. D. 152; 59 L. J. M. C. 110; 63 L. T. 197; 4 J. P. 471; 38 W. R. 620.

(p) [1892] 1 Q. B. 418; 61 L. J. M. C. 94; 66 L. T. 464; 40 W. R. 462; 56 J. P. 153.

(q) [1895] 2 Q. B. 657; 65 L. J. M. C. 7; 44 W. R. 94; 59 J. P. 805.

(r) (1896) 65 L. J. M. C. 4; 73 L. T. 403; 60 J. P. 9.

(s) (1905) 93 L. T. 553; 69 J. P. 399; 3 L. G. R. 982; 21 Cox, 42.

(β) That he purchased with a written warranty or invoice to that effect; REGULA-
TIONS—*contd.*

(γ) That he had no reason to believe at the time when he sold it that it was other than butter or cheese;
AND

(δ) That he sold it in the same state as that in which he bought it (50 & 51 Vict. c. 29, s. 7).

The defendant must give due notice to the prosecutor that he will rely on the above defence, otherwise he will, although successful, be liable to pay the costs of the prosecution.

Where there has been a SALE of the articles, the provisions of 62 & 63 Vict. c. 51, s. 20 (referred to *ante*, p. 227) as to the sending of a copy of the *warranty* or *INVOICE*, &c., to the purchaser, &c., must be observed; otherwise this defence will not be available.

As to the position of a *servant*, where the warranty or invoice has been given to his master or employer, see sub-s. (iv.) of the last cited section, *ante*, p. 230.

It has been held by an Irish court that "guilty knowledge" is a necessary ingredient in the offence, and that the effect of the above provisions is merely to cast the onus of proof upon the defendant (*Fitzgerald v. Leonard*) (t); *sed quære*.

PENALTY.—*First offence*.—FINE, not exceeding 20*l.*, and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111). PENALTY for
breach of
regulations.

Second offence.—FINE not exceeding 50*l.*

Third offence.—FINE not exceeding 100*l.* (50 & 51 Vict. c. 29, s. 4).

A *third* or any subsequent offence may be punished by *three months' imprisonment*, with or without hard labour, if committed by the PERSONAL act, default or culpable negligence of the defendant (62 & 63 Vict. c. 51, s. 17 (ii.)).

The court may direct any part of the penalty to be paid to the prosecutor to reimburse him for the costs of analysis or other expenses (50 & 51 Vict. c. 29, s. 11).

The Local Government Board may, too, make *regulations* for prohibiting the use of a substance as a PRESERVATIVE in the manufacture or preparation for sale of

Regulations
as to preser-
vation.

butter, margarine, or milk-blended butter, or for limiting the extent to which the preservatives may be used. Any one who *manufactures, sells, or exposes* or offers for sale, or has in his possession for the purpose of sale, *butter, margarine, or milk-blended butter* which contravenes such regulations is guilty of an OFFENCE (7 Edw. 7, c. 21, s. 7).

The PENALTY is as above (*ib.* s. 11).

Appeal.

APPEAL lies to the quarter sessions against a conviction under these Acts; but see *R. v. Otto Mousted, Ltd.* (u).

Marking of wrappers, &c., used in connection with margarine.

A person dealing in *margarine* commits an OFFENCE if he describes it *in any wrapper* enclosing it, or *on any package* containing it, or on any *label* attached to it, or in any *advertisement or invoice*, by any name other than "*margarine*," or a name combining the word "*margarine*" with a fancy or other descriptive name *approved by the Board of Agriculture, &c.*, and printed in type not larger than and in the same colour as the word "*margarine*." The PENALTY is the same as for a breach of regulations (*ante*, p. 701) (7 Edw. 7, c. 21, s. 8). Cf. *Tanner v. Dyball* (x), decided before the "Butter and Margarine Act, 1907."

Protection to employers.

Protection is afforded to employers who have used due diligence to enforce the Acts. It is provided that an *employer*, when summoned, may lay an information against any other person whom he charges as the actual offender, and he will then be entitled to have such person brought before the court at the hearing; and if, after the commission of the offence has been proved, the employer can satisfy the court that he has used due diligence to enforce the requirements of the statute, and that the person whom he alleges to be the real offender committed the offence without the knowledge, consent, or connivance of his employer, the latter will be exempt from penalty, and the employé must be summarily convicted (50 & 51 Vict. c. 29, s. 5; 7 Edw. 7, c. 21, s. 11 (ii.)).

REGISTRATION of manufactories and premises of wholesale dealers.

Every *manufactory of margarine or margarine-cheese, &c.*, in the United Kingdom, and all premises wherein the business of a *wholesale dealer in margarine* or

(u) *Ante*, p. 240.

(x) (1906) 94 L. T. 539; 70 J. P. 279; 4 L. G. R. 506.

margarine-cheese is carried on, must be REGISTERED with the local authority by the owner or occupier in such manner as may be from time to time prescribed; and if such owner or occupier carries on the manufacture or business in an *unregistered* place, he commits an OFFENCE against the Act of 1887, and is liable to penalties similar to those indicated (p. 701) for breach of the statutory regulations (50 & 51 Vict. c. 29, s. 9; 62 & 63 Vict. c. 51, s. 7 (iv.)).

These provisions as to registration apply also to (a) *Butter factories*, i.e., premises on which, by way of trade, butter is blended, reworked, or subjected to any other treatment, but *not so as to cease to be butter*; (β) all premises wherein *milk-blended butter* is manufactured, or the business of a *wholesale dealer in milk-blended butter* is carried on. By *milk-blended butter* is meant any mixture produced by mixing or blending butter with milk or cream, other than condensed milk or cream (7 Edw. 7, c. 21, s. 1 (i.)).

Milk-blended
butter.

The *occupier* of such manufactory, or such *wholesale dealer*, must, too, keep a REGISTER showing the quantity and destination of *each consignment* of *margarine*, *margarine-cheese*, or *milk-blended butter* sent out, and such register must be open to the inspection of any officer of the Board of Agriculture, &c. (62 & 63 Vict. c. 51, s. 7; 7 Edw. 7, c. 21, s. 1 (ii.)). It is an OFFENCE for such occupier or dealer to (a) fail to keep such register; (β) refuse to produce it to an officer of the board; (γ) fail to keep it posted up to date; (δ) wilfully make an entry false in any particular; (ε) fraudulently omit to enter any particular (*ib.*).

REGISTER to
be kept by
manu-
facturer or
wholesale
dealer.

PENALTY.—FINE not exceeding 10*l.*, or for the second or any subsequent offence 50*l.*, recoverable by *distress*, and in default, imprisonment *without* hard labour, according to scale (p. 111).

Penalty.

Any officer of the Board of Agriculture, &c., or of the Local Government Board may enter and inspect *registered* premises and take samples therein. And the first-named board may give special authority to an officer to enter premises which are *unregistered* if there is reason to believe that they ought to be registered or that butter is made or stored therein; but he must, if requested, produce his authority. There is also power conferred on

Inspection
of factories,
&c.

local authorities to give special powers of entry, &c., to their officers in the case of registered butter factories (7 Edw. 7, c. 21, s. 2).

Butter
factory not to
communicate
with other
registered
premises.

It is an OFFENCE for the occupier of premises to use them as a *butter factory* if they form part of or *communicate* (otherwise than by a public street or road) with any *other premises* which are *required to be registered* for the manufacture of, or wholesale dealing in, margarine, &c.; or for the manufacture of, or wholesale dealing in, blended-butter; and the local authority is required to remove such premises from the register of butter factories (7 Edw. 7, c. 21, s. 1 (iii.)). This prohibition does not, however, extend to premises which on 1st January, 1907, were being used as a butter factory and formed part of, or communicated with, premises then registered under the Acts, "if and so long as the Board of Agriculture and Fisheries so direct" (*ib.*).

The provisions as to the PENALTY are the same as those in respect of a breach of regulations (*ante*, p. 701).

Prohibition of
adulterants in
butter
factory.

If any substance *intended to be used* for the *adulteration* of butter is found in any *butter factory*, the occupier thereof is guilty of an OFFENCE; and, if the substance so found is *oil or fat capable* of being so used, it is to be *deemed to be intended* to be so used unless the contrary is proved (7 Edw. 7, c. 21, s. 3).

The PENALTY is the same as for breach of regulations (*ante*, p. 701).

Limit of
moisture in
butter or
margarine.

The occupier of a butter factory or margarine factory, as the case may be, is guilty of an OFFENCE if there be therein (a) *butter*, which, when prepared for sale or consignment, contains *more than 16 per cent. of water*; (β) *margarine*, which, when prepared for sale or consignment, contains *more than 16 per cent. of water*. So, if any such butter or margarine is *consigned* from the factory, the *consignor* is similarly liable. It is immaterial whether the excess of moisture is due to adulteration or not; but the occupier or consignor will not be liable if he proves to the satisfaction of the court that the butter or margarine was not made, blended, reworked or treated in the factory (7 Edw. 7, c. 21, s. 4 (i.)).

Limit of
moisture in
MILK-
BLENDED
BUTTER.

It is, moreover, an OFFENCE, under the same section, for any person to *manufacture, sell, or expose or offer for sale, or have in possession* for the purpose of sale, any

milk-blended butter which contains more than 24 per cent. of water (ib. s. 4 (ii.)).

The PENALTY under this section (s. 4) is the same as that for a breach of regulations (*ante*, p. 701).

MILK-BLENDED BUTTER must be dealt with under such name or names as shall be approved by the Board of Agriculture, &c.; and *under the conditions applicable to the sale or description of MARGARINE*. But, in any case, where (in order to comply with the regulations) the article must be delivered to the purchaser in a wrapper, there must, *in addition to the approved name*, be printed on the wrapper in such manner as the board may approve, *such description of the article*, setting out the percentage of moisture or water contained therein, as the board may approve (7 Edw. 7, c. 21, s. 9 (i.)).

Regulation
of sale of
MILK-
BLENDED
BUTTER.

When forwarded by public conveyance, milk-blended butter must be consigned under the approved name; and, subject to this modification, 50 & 51 Vict. c. 29, s. 8 (*ante*, p. 698), will apply to milk-blended butter in like manner as it applies to margarine (s. 9 (ii.)).

Any person who *deals with, sells, or exposes* or offers *for sale, or has in his possession* for the purpose of sale, or *describes* any milk-blended butter contrary to these enactments commits an OFFENCE for which the PENALTY is the same as for breach of regulations (*ante*, p. 701) (s. 9 (iii.)). As to *registration* of factories, &c., see *ante*, p. 702.

The defendant may, however, raise any defence open to him under 50 & 51 Vict. c. 29, s. 7, *i.e.*, that he purchased with a written warranty or invoice, &c. (*ante*, p. 701).

As to the OBSTRUCTION OF AN OFFICER in the discharge of duties under the Acts, see *ante*, p. 238.

Obstruction
of officer.

MARKETS AND FAIRS.

The Markets and Fairs Clauses Act, 1847, applies only to markets and fairs authorized by subsequent Acts of Parliament which may incorporate its provisions. But under the Public Health Act, 1875 (ss. 166, 167) and the Public Health Act, 1908 (8 Edw. 7, c. 6), every urban authority, and also every *rural* district council (if the consent of the Local Government Board be secured),

has power to provide a market place, &c., and to take tolls; and the provisions of the Act of 1847 are, so far as is necessary, incorporated with the later Acts. As to procedure under the later Acts, see *post*, p. 804.

Selling toll-
able articles
within pre-
scribed limits.

Any person (*other than a "licensed hawker,"* including in that term a *certificated pedlar*) commits an OFFENCE who *sells or exposes for sale* in any place within the prescribed limits, *except in his own dwelling-house or shop*, an article in respect of which tolls are authorized to be taken in the market.

Exemption of
"licensed
hawkers."

The PENALTY is a fine not exceeding 2*l.*, recoverable by distress, and, in default, imprisonment, *without hard labour*, according to scale (p. 111) (10 & 11 Vict. c. 14, s. 13). The exemption of "licensed hawkers" does not protect a certificated pedlar who *uses a horse and cart* and so acts as a *hawker* in selling tollable articles within the limits of the market district (*Woolwich Local Board v. Gardiner*) (*y*). A man, who had long hawked vegetables, &c., without a licence, took out a hawker's licence, and it was then sought to penalize him under this section for selling vegetables and other articles for which the licence is not required (*ante*, p. 522). But the attempt failed, for the man, as Channell, J., said, "was not doing anything in breach of his licence. He was only doing that which could be done without any licence," and so could claim exemption as a "licensed hawker" (*Llandudno U. D. C. v. Hughes*) (*z*).

Private
dwelling-
house or shop.

A yard or other place, although adjoining premises used as a dwelling-house or shop, is not necessarily within the exception so as to protect the vendor (*Hooper v. Kinshole*) (*a*); and, where the skittle alley of an inn was let to the defendant for two days, it was held not to be his "shop," although there was a separate entrance from the street to the alley (*ib.*).

The Act of 1847 also contains provisions for the *weighing and measuring* of goods sold in a market by weights and measures to be supplied by the undertakers, and imposes PENALTIES on sellers *refusing*, when required by purchasers, to *weigh* goods in such weighing and

(*y*) [1895] 2 Q. B. 497; 64 L. J. M. C. 248; 59 J. P. 597.

(*z*) [1900] 1 Q. B. 472; 64 J. P. 357; 82 L. T. 147; 48 W. R. 366.

(*a*) (1877) 2 Q. B. D. 127; 46 L. J. M. C. 160; 25 W. R. 368.

measuring machines (ss. 21, 22), and on persons disobeying *bye-laws* (s. 43), obstructing officials (ss. 15, 16, &c.). As to what amounts to "hawking or exposing about the town for sale" within the meaning of a bye-law, see the judgments in *Philpott v. Allright (b)*. As to the WEIGHING OF CATTLE, see statutes cited, *post*, p. 861.

MARRIAGE ACT, 1898

(61 & 62 Vict. c. 58).

This Act amended the law relating to the attendance of registrars at marriages in nonconformist places of worship. The Act (*c*) provides for the presence of an "authorized person" certified as having been duly authorized by the governing body of the building, or of some registered building in the same registration district, and enacts (s. 12) that it shall be an OFFENCE—

Solemnization of marriages without presence of registrar.

If such "authorized person" *refuses or fails to comply* with the Act, or the enactments or regulations for the time being in force with respect to the solemnization and registration of marriage.

PENALTY, ON SUMMARY CONVICTION, *fine* not exceeding 10*l.*, and in default of *distress*, imprisonment *without* hard labour, according to scale (p. 111); ON INDICTMENT, imprisonment with or without hard labour for *two years*, or *fine* of 50*l.*

Upon conviction the defendant ceases to be an "authorized person."

The Act repeals so much of the Marriage Act, 1836, as punishes the solemnization of, or renders void, any marriage by reason of the absence of the registrar (s. 15).

As to solemnizing matrimony (except by licence) in an irregular manner or in unauthorized places, see 4 Geo. 4, c. 76, s. 21; 6 & 7 Will. 4, c. 85, s. 39; 49 Vict. c. 14, ss. 1, 2. See also the "Marriage with Foreigners Act, 1906" (6 Edw. 7, c. 40); and the Acts relating to marriage with a deceased wife's sister (6 Edw. 7, c. 30, and 7 Edw. 7, c. 47).

Irregular marriages.

As to making *false declarations and representations* for

(b) (1906) 94 L. T. 540; 70 J. P. 287; 4 L. G. R. 1013.

(c) N.B.—Rules and Regulations made under the Act by the Registrar-General were approved by the L. G. Board, 22 Feb., 1899 (Statutory Rules and Orders, 1899, Nos. 77, 78).

the purpose of procuring a marriage, see 3 & 4 Vict. c. 72, s. 4; 19 & 20 Vict. c. 119, s. 18; 55 Vict. c. 23, s. 15.

MASTER AND SERVANT.

Neglecting or
injuring
servant.

Any master or mistress who, being legally liable to provide a servant or apprentice with clothes, food, or lodging, wilfully and without lawful excuse refuses or neglects to do so, or maliciously causes bodily harm to such servant, calculated to endanger life or permanently injure health, commits an *indictable* misdemeanour punishable with penal servitude for five years (24 & 25 Vict. c. 100, s. 26). See also *ante*, p. 371; and as to *summary* proceedings, see *ante*, p. 269.

OFFENCES as
to servants'
characters.

A master is not, of course, bound to give a character to his servant; and any person commits an OFFENCE who—

- (a) *Personates* a master or mistress (or the executor, wife, steward, or other representative or agent of such master or mistress), and either personally or in writing gives a false, forged, or counterfeit character to anyone seeking to be hired as a servant.
- (b) Wilfully pretends or falsely asserts in writing that any servant was hired by him for a period or in a capacity other than that for or in which he was in fact hired.
- (c) Wilfully pretends or falsely asserts in writing that any servant left his service at other than the true time or had not been hired in any previous service.
- (d) Offers himself or herself as a servant and falsely pretends to have served where he or she has not.
- (e) Offers himself or herself as a servant *with a false or forged character*, or adds to, or alters in any manner, a character actually given by a former employer.
- (f) Offers himself or herself as a servant and falsely pretends not to have been in any previous service (32 Geo. 3, c. 56, ss. 1—5).

The “pretence” under (b) or (c) may (so it has been held) be by word of mouth or, even, by conduct (*R. v. Connolly* (cc)).

Penalty.

PENALTY.—FINE not exceeding 20*l.* and costs, and, in default of *payment*, imprisonment, with or without hard labour, according to scale (p. 111).

(cc) (1909) 79 L. J. K. B. 90; 54 S. J. 13; 26 T. L. R. 31.

Half the penalty goes to the informer and half to the poor of the parish (s. 6) : as to certain boroughs, see *ante*, p. 204. An offender who discovers and informs against his accomplices, before any information is laid against himself, is discharged and indemnified from all penalties (s. 8). APPEAL lies to quarter sessions (s. 10).

Master and servant—*contd.*

As to misappropriation of a master's corn for the purpose of giving the same to the master's horse or other animal contrary to his orders, see 26 & 27 Vict. c. 103.

Misappropriation of master's corn.

The PENALTY is imprisonment for not more than *three months*, with or without hard labour; or, a FINE not exceeding 5*l.*, and, in default of *payment*, imprisonment, with or without hard labour, according to scale (p. 111). Appeal lies (s. 2).

As to false characters given to, or used by, persons entering or enlisting in the *naval, military or marine* forces, see *post*, p. 884.

Seamen and soldiers.

MEDICAL MEN.

Anyone who obtains registration as a medical man by false pretences is guilty of an *indictable* misdemeanour under the Medical Acts (21 & 22 Vict. c. 90, s. 39); and anyone who wilfully and falsely (*a*) pretends that he is, or takes or uses the name or title of, a physician, doctor of medicine, licentiate in medicine and surgery, bachelor of medicine, surgeon, general practitioner, or apothecary; or (*β*), takes or uses any name, title, addition, or description implying that he is registered under those Acts; or (*γ*), takes or uses any name, title, &c., implying that he is recognised by law as a physician, or surgeon, or licentiate in medicine and surgery, or a practitioner in medicine, or an apothecary, is liable to a PENALTY of 20*l.* recoverable summarily by distress, and, in default, imprisonment without hard labour, according to scale (p. 111) (*ib.* s. 40). As to appropriation of penalty, see s. 42: it is payable to the treasurer of the General Council of Medical Education.

Medical men.

It is to be observed that there must be a pretence made wilfully and false in fact: so that (although penalties might be recoverable on civil process under the Apothecaries Act, 1815) it is not sufficient, in the case of

Medical men
—*contd.*

criminal proceedings, to show merely that the defendant, while neither registered nor qualified, has practised medicine or surgery (*Pedgrift v. Chevallier*) (*d*); and the conviction of an L.S.A. who had described himself as a "physician," honestly believing that he had a right to do so, was quashed (*Hunter v. Clare*) (*e*). But it seems doubtful whether a person having a non-registrable title and knowing his title to be non-registrable, as, *e.g.*, M.D., U.S.A., commits an offence by the mere use of the title M.D., there being no proof of an intent to deceive (*R. v. Lewis*) (*ee*).

Dentists.

For somewhat similar provisions as to *dentists*, see 41 & 42 Vict. c. 33, ss. 3, 4, 35; 49 & 50 Vict. c. 48, s. 26. As regards the practice of *medicine* as distinct from surgery, *i.e.*, the dispensing of medicine, giving medical advice, and attending the sick as medical adviser, the effect of the Apothecaries Act and the Medical Act of 1858 is that an unqualified person is prevented from practising. As regards *dentists* that is not so; but not only is the use by *unregistered* practitioners of the words "dentist" or "dental practitioner" prohibited under a PENALTY of 20*l.*, but also the use of any title or description which implies registration or that the practitioner is a person "specially qualified" to practise dentistry. There is a proviso in favour of persons not usually resident in this country, holding certain foreign qualifications, if they do not profess to be "registered," and also in favour of those whose names have disappeared from the register solely on the ground of their having ceased to practise. A man may, as we have seen, do dentist's work, and it is not wrong for him to inform the public that he does that which it is lawful for him to do. The statutes are directed to the personal description of the *man* as distinguished from the description of the *work* which the man does; but, "although any man may act as a dentist he *must not call himself a dentist*, or use any words *implying that he is a person specially qualified to do the work of a dentist*, unless he is registered under

(*d*) (1859) 8 C. B. N. S. 240, 246.

(*e*) [1899] 1 Q. B. 635; 68 L. J. Q. B. 278; 80 L. T. 197; 47 W. R. 394; 63 J. P. 308.

(*ee*) (1896) 60 J. P. 392.

the Act" (per *Cozens-Hardy*, M.R., in *Bellerby v. Heyworth* (*f*), in which the notice was "B. H. & B. Finest Artificial Teeth. Painless Extraction. Advice Free. Mr. Heyworth attends here"). In that case it was held, overruling *Barnes v. Brown* (*ff*), that the Acts had not been contravened, as the notice contained no profession of the qualification of the practitioners; but the court declined to express an opinion whether the words "specially qualified" are used in a popular sense or are confined to the special qualifications named in the statutes as entitling a person to be registered. "It would, however, be very difficult," added *Buckley*, L.J., "to say that, if a person put up a brass plate on his door, 'Mr. A. B., a person specially qualified to practise dentistry, attends here daily to perform dental operations,' he would not fall within the Act." As to *veterinary surgeons*, see 44 & 45 Vict. c. 62, ss. 11, 12, 16, 17. The use of any false description implying membership of the Royal College is prohibited by s. 16; and under s. 17 the bare use by an unregistered person of any addition or description, stating that he is *specially qualified* to practise any branch of veterinary surgery, is an offence—the word "qualified" being used in its popular sense, so that where a man, not "specially qualified," exhibited outside his house a board with his name and the words "canine specialist—dogs and cats treated for all diseases," it was held that justices ought to have convicted (*Royal Coll. of Vet. Surg. v. Collinson*) (*g*). But considerable doubt was thrown upon an earlier case, in which it was held that it is an offence for an unregistered shoeing smith to describe his place of business as a "veterinary forge" (*Royal Coll. of Vet. Surg. v. Robinson*) (*h*). "If you can evolve out of the words 'veterinary forge' the meaning that there was a forge attended by a person who was entitled to call himself a veterinary surgeon, the case may have been right" (per *Buckley*, L.J., in *Bellerby v.*

Veterinary
surgeons.

And see 63 &
64 Vict. c. 24,
as to certain
Scotch
certificates.

(*f*) [1909] 2 Ch. 23; 78 L. J. Ch. 666; 101 L. T. 254; 53 S. J. 576; 25 T. L. R. 591; 73 J. P. 361.

(*ff*) [1909] 1 K. B. 38; 78 L. J. K. B. 39; 99 L. T. 801; 72 J. P. 485; 25 T. L. R. 3.

(*g*) [1908] 2 K. B. 248; 77 L. J. K. B. 689; 99 L. T. 122; 72 J. P. 267.

(*h*) [1892] 1 Q. B. 557; 61 L. J. M. C. 146; 66 L. T. 263; 56 J. P. 313.

Veterinary
surgeons—
contd.

Heyworth, supra; and cf. *Panhaus v. Brown* (*hh*), a case under the Dentists Act). The maximum penalty under s. 16 or s. 17 is 20*l.*

MERCHANDISE MARKS.

OFFENCES
UNDER THE
MERCHAN-
DISE MARKS
ACT, 1887.

Every person, UNLESS HE PROVES THAT HE ACTED WITHOUT INTENT TO DEFRAUD, commits an OFFENCE who—

- (a) Forges any *trade-mark*; *i.e.*, who falsifies a genuine trade-mark, or who, without the assent of the proprietor (proof of which lies on the defendant), makes such a trade-mark or a mark so like it as to be calculated to deceive. "Trade-mark" means registered trade-mark, but *includes* such a mark as is protected, under an Order in Council, in the Colonies or a Foreign State (see Patents and Designs Act, 1907, s. 91);
- (b) Falsely *applies to goods a trade-mark* or mark so nearly resembling a trade-mark as to be calculated to deceive; and he is to be deemed so to apply it if he applies it without the assent of the proprietor—the burden of proving such assent lying on the defendant;
- (c) Makes any die, block, or other instrument to be used for forging a trade-mark;
- (d) Applies any *false trade description* to goods. "Trade description" means any indication, direct or indirect, (i.) as to the number, quantity, measure, gauge or weight of goods, or (ii.) as to the place or country in which they were produced, or (iii.) as to the mode of production, or (iv.) as to the material composing them, or (v.) as to their being the subject of patent, privilege, or copyright. The expression includes marks having a special connotation by custom of trade, as well as trade-marks; while any statement or alteration that makes the description *false in a material particular* constitutes falsity;
- (e) Disposes of, or has in his possession, any die, block, or other instrument for the purpose of forging a trade-mark; or,
- (f) Causes any of the above things to be done (50 & 51 Vict. c. 28, ss. 2 (i.), 4, 5). For PENALTY, see p. 713.

(*hh*) (1904) 68 J. P. 435.

So, too, everyone commits a like OFFENCE who *sells, or exposes for, or has in his possession for, sale, or any purpose of trade* or manufacture, goods or things to which a *forged trade-mark or false trade description* is applied, or to which any trade-mark or mark so nearly resembling a trade-mark as to be calculated to deceive is falsely applied, UNLESS HE PROVES—

Offences
under Act of
1887—*contd.*

- (a) That, after taking all reasonable precautions, he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the trade-mark, mark, or description; AND
- (β) That, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained the articles; or
- (γ) That *otherwise he had acted innocently* (*ib. s. 2 (ii.)*). For PENALTY, see *infra*.

Persons, who do acts apparently within the prohibition of the statute (as amounting to the making of instruments for forging trade-marks or to the false application of trade-marks or descriptions), may, nevertheless, exempt themselves from penalties by proving that they acted in the ordinary course of business, as the employes of a person resident in the United Kingdom. Such defendants must, however, prove that they were not interested in the goods by way of profit or commission dependent on the sale of the goods, and that they took reasonable precautions, gave all the information in their power, and acted innocently. But, unless they give due notice to the prosecutor that they will rely on this defence, they will be liable to pay the prosecutor's costs (*ib. s. 6*). So, too, a servant acting under the instructions of a master resident in the United Kingdom is exempt if he acts *bonâ fide* and gives full information (*ib. s. 19 (iii.)*).

Exemption
of certain
persons
employed in
ordinary
course of
business.

The accused may be prosecuted either under the Summary Jurisdiction Acts or on indictment, and, if the former course is adopted, he must, at the outset, be given the OPTION OF TRIAL BY JURY (*s. 2 (vi.)*, and *ante*, p. 63).

PENALTY.—*First offence*.—FINE not exceeding 20*l.*, and, in default of *distress*, imprisonment, *without hard labour*, according to scale (*p. 111*); or, IMPRISONMENT, with or without hard labour, for not more than FOUR MONTHS.

PENALTY.

Penalty--
contd.

Second offence.—FINE not exceeding 50*l.*, recoverable similarly ; *or*, IMPRISONMENT, with or without hard labour, for not more than SIX MONTHS.

Forfeiture.

And the court may ORDER that every article by means of or in relation to which an offence has been committed shall become *forfeit* to the Crown, the court having power to order the forfeited articles to be destroyed or disposed of as it shall think fit (*ib. s. 2 (iv.)*). There is also power to award *compensation* (out of the proceeds realized by the disposition of the goods) to an innocent party for any loss sustained in dealing with the goods (*s. 12 (iii.)*).

Compensa-
tion.

Costs.

The court may order either the prosecutor to pay to the defendant, or the defendant to pay to the prosecutor, the costs (*ib. s. 14*).

Appeal.

APPEAL lies to quarter sessions (*ib. s. 2 (v.)*).

The maximum punishment after conviction on *indictment* is two years' imprisonment with hard labour and a fine.

" Intent to
defraud."

With regard to the expression "intent to defraud," it may be observed that, if an untrue description or false mark is knowingly applied to goods, the offence would be complete although there might be *no intention to cheat* the purchaser in a pecuniary sense. It is sufficient if there is an intent to induce him to accept articles which might otherwise be rejected (cf. *Storey v. Chilworth Gunpowder Co.*) (*i*). And an offence may be committed although the article supplied is *not* in any respect *inferior in quality*, as where "machine-made" cigarettes are sold under the description "hand-made" (*Kirshenboim v. Salmon & Gluckstein*) (*k*). Nor is it necessary to prove that the purchaser was in any way misled (see *R. v. Butcher*, cited *post*, p. 718).

" Acted inno-
cently."

Clauses (*a*) and (*β*) of *s. 2 (ii.)* (*ante*, p. 713) apply to cases where the goods are in the possession of the accused for sale or are sold with the forged trade-mark or false description already stamped upon them. Where the false description is applied upon the occasion and as part of the terms of sale, the accused must rely for his exculpation upon clause (*γ*) by showing that he *acted innocently*

(*i*) (1890) 24 Q. B. D. 90 ; 59 L. J. M. C. 13 ; 62 L. T. 73 ; 54 J. P. 436.

(*k*) [1898] 2 Q. B. 19 ; 67 L. J. Q. B. 601 ; 78 L. T. 658 ; 46 W. R. 573 ; 62 J. P. 439.

(per *cur. Coppen v. Moore* (No. 2)) (l). In order to establish his innocence under s. 2 (ii.) it is not sufficient for the defendant to show that he did not intend to defraud the purchaser (*Wood v. Burgess*) (m); but, on the other hand, the words "acted innocently" are apparently not limited to innocence of all doubt as to whether the article is genuine or not. As, *e.g.*, where a vendor, having reason to suspect the genuineness of a trade-mark, communicates his doubt to the purchaser and sells the article "for what it is" (*Christie, Manson and Woods v. Cooper*) (n). The innocence contemplated by the Act is innocence of any intention to infringe the Act; but there may be such innocence, even although there be suspicion of the genuineness of the article or trade-mark (per *Channell, J., ib.*).

We have seen (*ante*, p. 712) that the term "trade description" has a very wide connotation. The Act does not apply to a description purely verbal, but the description need not be physically attached to the article. Thus, an *invoice* may amount to a false trade description; as where a cask containing less than thirty-six gallons of beer was described as a "barrel" (*Budd v. Lucas*) (o); and, indeed, this was held to be the case where the prosecutor had himself insisted that the description already given verbally to him should be added to the invoice before he would consent to the property passing to him (*Coppen v. Moore* (No. 1)) (p). But, where a tailor, in response to a letter asking for "patterns of good stuff, all wool," for a "suit of Scotch tweeds," sent certain patterns, saying, "Enclosed please find patterns as desired," and afterwards made a suit from the selected pattern, which did not conform to the description, "Scotch tweed, all wool," a Scotch court held that he had not applied a false trade description (*Lord Advocate v. Jacob*) (pp). And see *Lord Advocate v. Suits, Ltd.* (p³).

False trade
description.

(l) *Infra*, (p).

(m) 24 Q. B. D. 162; 59 L. J. M. C. 11; 61 L. T. 593; 54 J. P. 325.

(n) [1900] 2 Q. B. 522; 69 L. J. Q. B. 708; 83 L. T. 54; 64 J. P. 692.

(o) [1891] 1 Q. B. 408; 60 L. J. M. C. 95.

(p) [1898] 2 Q. B. 300; 67 L. J. Q. B. 689; 78 L. T. 520; 46 W. R. 620.

(pp) [1908] S. C. (J.) 90—Ct. of Just.

(p³) [1908] S. C. 1163—Ct. of Sess.

Application
of false
marks, names
or initials.

The Act contains a very comprehensive section as to what is to be deemed an *application* of a false trade-mark or description (s. 5 (i.) (ii.)); and it extends to the application of any arrangement of marks (whether including a trade-mark or not) which is calculated to deceive as to the person whose *manufacture or merchandise* the goods really are (s. 3 (ii.)). It also extends to the application of a *false name or initials*, i.e., any name or initials which (a) are not a trade-mark or part of a trade-mark, and (b) are an unauthorized imitation of the name or initials of a trader in similar goods, and (c) are either those of a fictitious person or of some person not *bonâ fide* carrying on business in connection with such goods (s. 3 (iii.)).

Further
decisions
under the
Act.

Where a butcher, being asked to put a mark upon the invoice showing that certain mutton was (as he had stated to the purchaser) New Zealand meat, wrote simply "N. M.," this was held to be a "trade description," although there was no evidence of any trade custom importing a particular meaning to the letters (*Cameron v. Wiggins*) (q).

And, in a recent case, it was held (*Darling, J., diss.*) that "soda crystals" was a "false trade description" of a mixture of crystallized carbonate of soda and crystallized sulphate of soda. This decision seems to have turned on some finding of fact that "soda crystals" means "washing soda," which contains a very small proportion of the sulphate (*Fowler v. Cripps*) (r). See also two decisions as to a "description" in cases where the weight of goods supplied is, in fact, *less* than that for which the customer asks. A customer having asked for two $\frac{1}{2}$ lbs. of tea, defendant's salesman gave him two packets each stamped with a true statement that the weight, *including the wrapper*, was $\frac{1}{2}$ lb.: there was also, under the string round the packet, a ticket " $\frac{1}{2}$ lb. cheque for tea, &c.," which entitled the customer to a present. The court upheld a *dismissal* of the information (*Langley v. Bombay Tea Co.*) (s). Compare *Star Tea Co., Ltd. v. Whit-*

(q) [1901] 1 K. B. 1; 70 L. J. K. B. 15; 83 L. T. 428; 49 W. R. 237; 19 Cox, 580.

(r) [1906] 1 K. B. 16; 75 L. J. K. B. 72; 70 J. P. 21.

(s) [1900] 2 Q. B. 460; 69 L. J. Q. B. 752; 83 L. T. 175; 49 W. R. 27.

worth (t), in which case the customer, having asked for $\frac{1}{4}$ lb. tea, received a packet wrapped in paper on which was printed the true statement "quarter pound gross weight." Under the string was a ticket "quarter pound 2s. 8d. tea, &c.," which entitled the customer to a present. The court upheld a conviction. Cf. *post*, p. 943.

In *Bishop v. Toler* (u), the defendant had in his possession for sale some margarine, known as "Le Dansk," in boxes marked "French Factory, Le Dansk, Paris." The substance was made from animal fat in Paris; yet, on the ground that a little Danish butter and English milk were added in England to improve it, the court held the description to be false in a material respect. But, where Apollinaris water had been subjected to a process, involving an addition of matter, and intended to improve it for purposes of sale, it was held that "natural mineral water" was not a false trade description (*Davenport v. Apollinaris Co.*) (x). And the inclusion in a watch of certain parts partly manufactured abroad does not, in point of law, necessarily make the epithet "English" a false description (*Williamson v. Tierney*) (y). It may be added that, in *Budd v. Lucas* (yy), it was held that evidence of former transactions between the parties should have been admitted with a view to establishing the *mens rea*.

There is special provision excluding from the operation of the Act trade descriptions, lawfully and generally applied, as early as 1887, to indicate a particular class of goods or particular method of manufacture, as, *e.g.*, patent leather, or Bath chaps. But there is an important proviso in respect of *misleading* descriptions as to the *place* where the goods were made or produced, as, *e.g.*, "Havanah cigars": in such cases, the *actual* place of production must be conspicuously and definitely stated (s. 18). And the section was held to have no application to a case in which it appeared that British-made cigars had for many years been sold in boxes labelled "Flor de Creanzo," with other Spanish words

Exemption of certain descriptions in vogue before 1887.

(t) (1904) 91 L. T. 87; 20 Cox, 658; 68 J. P. 443.

(u) (1896) 65 L. J. M. C. 1; 73 L. T. 402; 59 J. P. 807.

(x) (1903) 84 L. T. 19; 67 J. P. 323.

(y) (1900) 83 L. T. 592; 65 J. P. 71.

(yy) *Ante*, p. 715.

and the picture of a Spanish lady, but nothing in the get-up to indicate that the cigars were made in Britain. The protection of the section is confined to a particular class of goods which have long been sold under a particular trade description (*R. v. Butcher*) (z). And see *R. v. Phillips* (zz).

Liability for acts of servants or agents.

Under this statute, a master or principal is liable for the acts of his servants or agents where the conduct constituting the offence was pursued within the scope or in the course of their employment. It is not sufficient to relieve the master that the acts were contrary to his orders: he must prove, further, that he acted in good faith, and had done all that it was reasonably possible to do to prevent the commission of the offence (*Coppen v. Moore*) (No. 2)) (a). And cf. *R. v. Key*, cited *post*, p. 796.

False representations as to place of manufacture of watches.

In the absence of any description on the watch itself showing where it was made, a description on the case is to be deemed *prima facie* to extend to the watch (*ib.* s. 7); and any person who makes a *false declaration* as to the country or place in which a watch was made, in order to obtain the marking of the watch case at an assay office, may either be prosecuted on indictment (and is then liable to the penalties of perjury), or, on summary conviction, he may be fined a sum not exceeding 20*l.*, recoverable as on p. 713 (*ib.* s. 8). Everyone is liable to a like pecuniary penalty who falsely represents that goods are made by a person holding a *royal warrant*, or for the service of the King or any member of his family, or for a *government department* (*ib.* s. 20); and see *post*, p. 752.

Or as to royal warrant.

Conviction of persons procuring, &c., commission of offences abroad.

Any person who, whilst in this country, aids, abets, procures, counsels, or is accessory to the commission of acts *out of the United Kingdom* which, if committed within it, would be a misdemeanour under the statute may be punished *as a principal*, in any county or place in which he may be, as though the offence had been there committed (*ib.* s. 11).

Search warrant.

When a summons or warrant has been issued, any justice may, on sworn information, issue a search warrant to secure the seizure of any goods or things relating to

(z) (1908) 99 L. T. 622; 24 T. L. R. 797; 21 Cox, 697; 72 J. P. 454.

(zz) (1909) 73 J. P. 458; 25 T. L. R. 764.

(a) [1898] 2 Q. B. 306; cited p. 715, and cf. *ante*, p. 629.

the offence and supposed to be on the defendant's premises, or otherwise in his possession or under his control in any place. Any goods seized must be brought before a court of summary jurisdiction; and, in case the owner is unknown or cannot be found, provision is made for the laying of an information merely to secure an ORDER for the forfeiture and disposition of the goods. The court may direct notice of the intended forfeiture to be given by public advertisement, and may compensate innocent parties out of the proceeds (*ib. s. 12*). Cf. *ante*, p. 714.

No prosecution is to be commenced more than *three years* after the commission of the offence, or *one year* after its discovery by the prosecutor, whichever period first expires (*ib. s. 15*). It is unnecessary in an information, &c., to describe, or give a facsimile of, a trade-mark or forged trade-mark (*s. 9*). Admissions obtained by discovery or interrogatories in a civil action cannot be given in evidence on behalf of the prosecution (*s. 19 (ii.)*). In the case of *imported* goods, evidence of the port of shipment is *prima facie* evidence of the place or country in which the goods were made or produced (*s. 10 (ii.)*). The Vexatious Indictment Act applies (*s. 13*) (*ante*, p. 133).

Procedure.

In certain important cases the Board of Trade or the Board of Agriculture and Fisheries may undertake the prosecution; and, in such cases, the expenses will be payable out of public funds (54 Vict. c. 15; 57 & 58 Vict. c. 19; 3 Edw. 7, c. 31).

As to goods described as being the subject of any existing patent, privilege, or copyright, see also PATENTS AND DESIGNS ACT, 1907, *post*, p. 751; and for offences as to the registration of TRADE MARKS, see 5 Edw. 7, c. 15.

MIDWIVES ACT, 1902.

After APRIL 1st, 1910, uncertified women, unless they are qualified medical practitioners, or are acting under the direction of such a practitioner, will be PROHIBITED, under a PENALTY of 10*l.*, from "habitually and for gain" attending women in child-birth. As the law stands at present, a woman may, if she thinks fit, seek certification by the Central Midwives Board, and it is provided that—

OFFENCES by <i>uncertified</i> women.	Any woman (other than a qualified medical practitioner), who is <i>not certified</i> under the Act, commits an OFFENCE if she
	(i.) <i>Takes or uses the name or title of "midwife" either alone or in combination with any other word or words ; OR,</i> (ii.) <i>Takes or uses any other name, title, addition or description implying that she is (a) certified under the Act, or (β) a person specially qualified to practise midwifery, or (γ) recognised by law as a midwife (2 Edw. 7, c. 17, s. 1). For PENALTY, see infra.</i>
Notification of practice.	Before commencing to practise as a midwife, or even holding herself out as a practising midwife, a certified woman must give a notice in writing (containing such particulars as are required by the rules of the Central Midwives Board) to the council of the county or county borough in which she usually resides or carries on practice. A like notice must be given every January during the time she practises ; and notices must also be given in every area in which she practises or acts as midwife, "<i>within forty-eight hours at the latest after she commences so to practise or act</i>" (<i>ib.</i> s. 10). A county council may delegate its powers to a district council, while <i>any</i> supervising authority may delegate its powers to a committee ; and, in case of delegation, the notices must be given to the body to whom the powers have been delegated.
OFFENCES by <i>certified</i> women.	The <i>certified</i> woman commits an OFFENCE if she (i.) <i>Omits to give the said notices or any of them ; OR,</i> (ii.) <i>Knowingly or wilfully makes, or causes or procures any other person to make, any false statement in such a notice (ib. s. 10).</i>
Penalty.	PENALTY in respect of any of the above offences : FINE of <i>5l.</i> recoverable by <i>distress</i>, and, in default, imprisonment <i>without</i> hard labour, according to scale (p. 111). The above offences may be prosecuted by the council of the county or county borough (<i>ib.</i> s. 13). APPEAL lies to the quarter sessions (<i>ib.</i> s. 14).
Obtaining certificate by false representation.	Any woman who procures, or attempts to procure, a certificate by means of any false or fraudulent declaration, certificate or representation, in writing or otherwise, is "<i>guilty of a misdemeanour,</i>" and liable to twelve months' imprisonment with hard labour (<i>ib.</i> s. 11).

Moreover, any person who wilfully makes, or causes to be made, any "falsification" in a "matter relating to the roll of midwives," is "guilty of a misdemeanour" and is liable to a like punishment (*ib. s. 12*). Wilful falsification of roll of midwives.

MILITARY ("Reservists" and "Territorials").

The battalions of militia have now, by Order in Council, been transferred to the army reserve and will henceforward be deemed to have been formed under the Territorial and Reserve Forces Act, 1907, as battalions of "special reserves." The order has applied to these battalions the provisions of the Reserve Forces Acts, 1882 to 1906. But, in the absence of the assent of any particular officer or man to the transfer (certified by the commanding officer), the existing conditions of service will not be affected (7 Edw. 7, c. 9, s. 34). There will, however, be no further "recruiting" for the "militia"; and it is believed that there will be no "training" of the individuals who still remain "militiamen." The "militia."

New recruits will, therefore, come within the provisions of the Reserve Forces Acts; and we refer, accordingly, to the provisions of those Acts in lieu of the Militia Acts.

Every person authorized to enlist recruits must furnish a man offering to enlist with a notice in the prescribed form, showing the general conditions of the contract, and directing the recruit to appear before a justice or officer authorized to attest him, either forthwith or at a time therein mentioned. Recruiting.

Upon the appearance of a candidate for enlistment, the justice must ask him whether he has been served with and understands the notice, and whether he is willing to be enlisted. If he does not appear, or does not assent to be enlisted, no further proceedings can be taken; and the justice must not in any case proceed if he deems the recruit to be under the influence of liquor. If the candidate appears and gives his assent, the justice, after cautioning him that any false answer will expose him to punishment, must read or cause to be read to him the questions in the "attestation paper," taking care that each question is fully understood; and, after ascertaining that his answers have been duly recorded, must require Attesting recruits.

him to make and sign the declaration as to the accuracy of the answers and administer to him the oath of allegiance contained in the paper. The justice must attest, by his signature, the fulfilment of all requirements, and deliver the document to the "recruiter." Thereupon the fee of 1s. and no more is to be paid to the justice's clerk. An immaterial error in an attestation paper may be amended by any justice before whom the military authority cause the recruit to attend ("Army Act" (*aa*), s. 80; 45 & 46 Vict. c. 48, s. 18). These provisions as to recruiting and attestation apply also to the "territorial force" (7 Edw. 7, c. 9, s. 10).

Every man of the "territorial force" is enlisted for a county for not exceeding four years; but there appears to be no statutory limit for the special reservist. The recruit may be attested not only by a justice but also by a lieutenant or deputy-lieutenant of any county, or by an officer (7 Edw. 7, c. 9, ss. 9, 10).

Making false
answer on
attestation.

If the recruit (whether a "regular," a member of the "territorial force," or a "reservist") knowingly makes a *false answer* to any question contained in the "attestation paper" and put to him by the justice or authorized officer, he may be tried by *court-martial*; or, at the discretion of the competent military authority, and (in case of a reservist) with the written sanction of the commanding officer, a court of *summary jurisdiction* may deal with the accused, who is liable on summary conviction to be *imprisoned*, with or without hard labour, for not more than THREE MONTHS ("Army Act," s. 99; 45 & 46 Vict. c. 48, s. 18; 7 Edw. 7, c. 9, s. 10). There is no power to substitute a fine for imprisonment (*ante*, p. 106).

Recruiting
without
authority.

Anyone who, without due authority, *publishes advertisements* for the purpose of *procuring recruits*, either for the regular army, the army reserve, or the territorial force, or receives any person under such an advertisement; or who, without such authority, *keeps* any place of *rendezvous* or *office* as connected with recruiting, or in any way directly or indirectly *interferes with recruiting*, becomes liable to a

(*aa*) The Army Act of 1881, with all the subsequent amendments incorporated therein, is renewed annually as the "Army Act."

PENALTY of 20*l.*, and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111) ("Army Act," s. 98; 45 & 46 Vict. c. 48, s. 18; 7 Edw. 7, c. 9, s. 10).

If any person who has been discharged *with disgrace* from any of the forces of the Crown afterwards enlist in the TERRITORIAL FORCE without declaring the circumstances of such discharge, or if any person, when subject to military law, is knowingly concerned in the enlistment in the TERRITORIAL FORCE of any such person, *or* wilfully contravenes any regulation relating to enlistment or attestation, he is liable to be tried by *court-martial*; *or* with the written sanction of the commanding officer, he may be dealt with by a court of *summary jurisdiction* and sentenced to *imprisonment* for THREE MONTHS, or fined 20*l.*, or both (7 Edw. 7, c. 9, ss. 11, 24). The fine goes to the Territorial Force Association of the county for which the man was enlisted (*ib.* s. 24 (iii.)).

Enlistment in the "Territorial Force" after discharge "with disgrace."

If any person who has been discharged with disgrace from any of the forces of the Crown afterwards enlist in the Army Reserve without declaring the circumstances of such discharge, he is liable, *if subject to military law* at the time, to be tried by *court-martial*, under s. 33 of the "Army Act," which relates to the making of false answers or declarations on enlistment; *or*, if he is *not so subject*, he may be tried by a court of *summary jurisdiction* under s. 99 of the "Army Act," and becomes liable to the punishment above referred to (*ante*, p. 722) as applicable to the offence of "making a false answer on attestation."

Enlistment in "Army Reserve" after discharge with disgrace.

There are, too, certain special provisions in relation to men of the TERRITORIAL FORCE contained in the Territorial and Reserve Forces Act, 1907. Thus:—

Constables and overseers must, when so required by or on behalf of the Army Council, conform with the orders and regulations in force with respect to the publication and service of notices. In case of default a constable or overseer becomes liable to a PENALTY not exceeding 20*l.*, recoverable by *distress* and, in default, imprisonment *without* hard labour according to scale (p. 111) (7 Edw. 7, c. 9, s. 19). If a man of the "territorial force," without leave or reasonable excuse, fails to appear at the time and place appointed for

Service and publication of notices.

Failure of territorial to fulfil training conditions.

preliminary training, or for annual training, or fails to attend the number of drills and fulfil the other conditions prescribed in relation to training for his arm or branch of the service, he is liable to FORFEIT to the King a sum not exceeding 5*l.*, recoverable on *complaint* (*sic*) by the prescribed officer (*ib.* s. 21). Any sums received by such officer must be accounted for by him in the prescribed manner (*ib.*)

Wrongful use,
&c., of public
property
issued to
territorials.

If any person designedly makes away with, sells or pawns, or wrongfully destroys or damages, or negligently loses anything issued to him as an officer or man of the "territorial force," or wrongfully refuses or neglects to deliver up on demand anything so issued to him, the *value* may be recovered in a court of summary jurisdiction, as a *civil debt*, on the complaint of the county association; cf. *ante*, pp. 118, 119. For the OFFENCE of designedly making away with, selling or pawning, or wrongfully destroying such property, he would also be liable to a PENALTY not exceeding 5*l.*, recoverable by distress and imprisonment. Fines are paid to the association of the county (7 Edw. 7, c. 9, ss. 22, 24).

All offences punishable on conviction are to be prosecuted and fines recovered as provided by ss. 166—168 of the Army Act (*ib.* s. 24 (iii.)) ; see also s. 25 (ii.), and *ante*, p. 408.

Application
of enact-
ments to the
"Territorial
Force."

Any enactment (other than those in respect of raising, service, pay, discipline or government) relating to the militia, yeomanry, or volunteers may be applied to the "territorial force," with the necessary adaptations, by Order in Council (*ib.* s. 28 (iii.)).

This provision was, we believe, intended to give power to apply certain Acts not directed specially to the militia, yeomanry, or volunteers, *e.g.*, some sections of the Railway Acts relating to the conveyance of troops; of the National Defence Act, 1888; of the Local Government Act, 1888; and s. 43 (i.) of the Friendly Societies Act, 1896 (*ante*, p. 487). See "Regulations for the Territorial Force and for County Associations, 1908," at p. 195.

As to the YEOMANRY, see 44 Geo. 3, c. 54; 47 & 48 Vict. c. 55; 2 Edw. 7, c. 39, &c.; but these Acts, as well as the VOLUNTEER Acts (26 & 27 Vict. c. 65, 32 & 33 Vict. c. 81, &c.), are inoperative, and there is, we believe, no intention of reviving any of their provisions.

It must be remembered that, in the case of the regular or auxiliary forces, there is no power to mitigate fines or terms of imprisonment below the specified minimum (45 & 46 Vict. c. 48, s. 25 (iii.); *ante*, p. 105); and if the case is being dealt with in an occasional court-house (cf. *ante*, p. 12), either party may require an adjournment to the next practicable petty sessional court.

The clerk, if required by an officer, must (for a fee of 3s.) send to him a certificate setting forth the nature of the offence, together with the judgment of conviction or acquittal as the case may be ("Army Act," s. 164).

The attestation paper, if purporting to be duly signed by the defendant, or the declaration purporting to be made by him on re-engagement, is evidence that he gave the answers to the questions which he is therein represented as having given. Moreover, letters, returns and other documents respecting service or discharge, if purporting to be signed by or on behalf of the Secretary of State, or the man's commanding officer, are evidence of the facts stated therein ("Army Act," s. 163; 45 & 46 Vict. c. 48, s. 18). See also *ante*, p. 408.

These provisions of the "Army Act" (ss. 163, 164) apply to a man of the "territorial force" (7 Edw. 7, c. 9, s. 26).

Proceedings against an alleged offender, "reservist," or "territorial," may be instituted whether his term of service has expired or not; and the proceedings may be instituted *within two months* after the time at which the offence becomes known to the officer who has power to direct the offender to be tried by court-martial, or, when a man of the Territorial Force, to his commanding officer, or (if the reservist, or man of the "territorial force," is not then apprehended), within two months of his apprehension (45 & 46 Vict. c. 48, s. 26; 7 Edw. 7, c. 9, s. 25 (ii.)); and as to the necessity for the sanction of a military authority before the institution of certain prosecutions, cf. 56 J. P. 586.

As to DESERTERS, see *ante*, p. 405. And as to claiming APPRENTICES who have enlisted, see *ante*, p. 268.

For further provisions relating to the "regular forces," see "SOLDIERS," *post*, p. 884.

Procedure.

Limitation of time.

MONEY-LENDERS ACT, 1900

(63 & 64 Vict. c. 51).

Definition of
"money-
lender."

"Money-lender" includes anyone whose *business* is that of money-lending, or who advertises or announces himself or *holds himself out in any way* as carrying on that business. Whether or not a person is so carrying on business is in each case a question of fact; but to bring him within the Act a certain degree of system and continuity about his transactions must be shown (*Newton v. Pyke*) (aa). The statute, however, exempts (i.) Pawnbrokers dealing under the Acts relating to them; (ii.) Societies registered under various Acts relating to Friendly Societies, Benefit Building Societies, Loan Societies, and Building Societies; (iii.) Bodies corporate empowered to lend money under special Acts; (iv.) Persons *bonâ fide* carrying on the business of banking, insurance, &c.; (v.) Bodies corporate exempted by the Board of Trade (s. 6).

Cf. *post*,
p. 752.

Cf. *ante*,
pp. 484—495.

Offences
under the
Act.

A "money-lender" is required by the terms of the Act—

- (a) to *register himself* in the prescribed manner and at the prescribed office "under his own or usual trade name, and in no other name, and with the address, or all the addresses if more than one, at which he carries on his business of money-lender";
- (β) to *carry on the business* "in his registered name, and in no other name and under no other description, and at his registered address or addresses, and at no other address";
- (γ) in the course of his business, to refrain from entering into any agreement with respect to the advance and repayment of money, and from taking any security for money, *otherwise than in his registered name*;
- (δ) on reasonable request and on tender of reasonable expenses, to *furnish the borrower with a copy* of any document relating to the loan or any security therefor (s. 2 (i)).

Under clause (a) no prosecution can be instituted save with the consent of a law officer of the Crown.

Clause (β) operates to prevent the money-lender from carrying out any single transaction in any other name or at any other address or place (*Gadd v. Provincial Union Bank* (No. 1)) (*a*³). And see *Stirling v. Silburn* (*a*⁴).

PENALTY for failure to comply with any requirement is a FINE not exceeding 100*l.*, and, in default of distress, imprisonment, *without* hard labour, according to scale (p. 111) (s. 2 (ii.)). In case of a *second* or subsequent conviction, IMPRISONMENT, with, or without hard labour, for not more than *three months*, or to a FINE of 100*l.*, or to both. If the offender be a *body corporate*, the maximum penalty on a *second* conviction is 500*l.* (s. 2 (ii.)).

If the money-lender, or his manager, agent, or clerk (or, in case of a corporation, a director, manager, or other officer) “by any *false, misleading, or deceptive statement*, representation or promise, or by any *dishonest concealment* of material facts,” fraudulently induces, or attempts to induce, any person to borrow money, or to agree to the terms on which money “is or is to be” borrowed, he is guilty of an *indictable misdemeanour* punishable with two years’ imprisonment, or to a fine of 500*l.*, or to both (s. 4).

MOTOR CARS.

The Locomotives on Highways Act, 1896, and the Motor Car Act, 1903, deal with the user of light locomotives now known as motor cars. Roadways to which the public are granted access are within these Acts as though they were *public highways* (3 Edw. 7, c. 36, s. 20 (i.)).

The earlier Acts, to which reference was made under the heading HIGHWAYS (LOCOMOTIVES) (except as to certain provisions in the Act of 1861 relating to tolls, damage to bridges, and locomotives constructed so as to become a nuisance) do not apply to a MOTOR CAR, *i.e.*, a vehicle propelled by mechanical power if *under five tons* in weight, unladen, and not used for the purpose of drawing more than *one* vehicle (such vehicle with its locomotive not exceeding in weight, unladen, *six and a half tons*). The weight of any water, fuel, or accumulators, used for

(*a*³) [1909] 2 K. B. 353; 78 L. J. K. B. 815; 101 L. T. 219; 25 T. L. R. 591.

(*a*⁴) (1909) 26 T. L. R. 13.

MONEY-
LENDERS—
contd.

Penalty.

False state-
ments or
representa-
tions, or
dishonest
concealment.

MOTOR CAR
ACTS.

What is a
motor car?

What is a
motor car?—
contd.

the purpose of propulsion, is not to be taken into account in calculating the weight of a vehicle unladen (59 & 60 Vict. c. 36, s. 1; Heavy Motor Car Order, 1904, App., p. 1192). But vehicles are *not* entitled to the benefits of the Motor Car Acts unless they are so constructed that *no smoke or visible vapour* is emitted therefrom, except from a temporary or accidental cause (*ib.*). So, too, if a car draws more than *one* trailer it is relegated to the status of a "traction engine"; or, again, if a car (*not exceeding two tons*) weighs, with its unladen trailer, more than four tons. Cars, exceeding two tons, are subject to additional regulations (App. p. 1190). If, however, the engine of an omnibus is a properly constructed "smokeless" engine, and any smoke emitted is so emitted owing to the *negligence of the driver* in supplying too much lubricating oil to the working parts of the machinery, the omnibus remains exempt from the provisions of the earlier Acts (*Star Omnibus Co. v. Tagg*) (*b*); and so, where smoke issued for a few moments from a motor car *owing to the negligence of the driver* it was held that no offence had been committed under s. 30 of the Act of 1878, *ante*, p. 537 (*R. v. Wilbraham*) (*c*). But see also *Hindle v. Noblett* (*b*).

What is a
motor cycle?

The term "motor cycle" is not defined in the Act, and the Local Government Board have no authority to define it; but they understand that, though the term might sometimes properly apply to other vehicles, it would be generally treated as limited to *motor cars* designed to travel on *not more than three wheels*, and weighing, unladen, *not more than three cwt.* (Local Government Board Circular of November 20th, 1903).

Motor cars
to be
"carriages."

A motor car is deemed to be a *carriage* within the meaning of any statute, rule, regulation, or bye-law; and, if it be used as a carriage of any particular class (as, *e.g.*, a hackney carriage), the law "relating to carriages of that class" will apply (59 & 60 Vict. c. 36, s. 1).

Where a motor car would be liable to excise duty as a "carriage," and exceeds one ton in weight, it is subject to an additional duty as a motor car (*ib.* s. 8). And a male person, who is regularly employed to drive a motor

(*b*) *Ante*, p. 537.

(*c*) (1907) 96 L. T. 712; 5 L. G. R. 764; 71 J. P. 336.

car, would, so far as "duty" is concerned, be on the same footing as a "male servant" within the Revenue Acts (3 Edw. 7, c. 36, s. 13); but the duty would not be charged if the motor were inscribed with the owner's name and address, and used solely for the conveyance of goods or of instruments of trade or husbandry.

Every motor car (including those used by persons in the public service of the Crown) must be *registered* with the council of some county or county borough, who will assign to it a separate number. If circumstances occur which affect the accuracy of the particulars entered in the register, the owner must give notice forthwith; and, in case of a change of ownership, an application must be made to cancel the registration or to continue it under the new ownership, otherwise the registration will become void. An *identification mark*, consisting of *two* plates, must be fixed on the car, one on the front thereof and the other on the back (or on the back of any vehicle attached to the car), in conformity with the regulations of the Local Government Board (3 Edw. 7, c. 36, ss. 2 (i.) (ii.), 7 (i.) (a); Articles I.—X., *post*, pp. 1166—1168).

In the case of a *manufacturer of, or dealer in, motor cars*, a *general identification mark* may be assigned by the council of the county or borough in which his business premises are situate. This mark may be used for *any car on trial after completion, or on trial by an intending purchaser*. On every occasion on which the car is used, the regulations require the manufacturer or dealer to record the distinguishing number placed on or annexed to the identification plates, and to record also the name and address of the driver (*ib.* s. 2; Article XII., *post*, p. 1169). As to the penalty for breach of *regulations*, see *post*, p. 737.

The *person driving a car* commits AN OFFENCE UNDER THE ACT of 1903 if—

- (a) the car is *used* on a public highway, or a roadway to which the public are granted access, *without being registered*; or,
- (b) when the car is so used, the *identification mark* is *not properly fixed* and in conformity with the regulations, *post*, p. 1168; or (being so fixed) is in any way *obscured* or rendered or allowed to become not easily distinguishable, unless the driver can prove that he has taken all steps reasonably practicable to prevent

REGISTRATION of motor cars.

Acts apply to Crown servants, see p. 16.

Identification mark.

Manufacturer's identification mark.

OFFENCES by driver: as to registration and identification mark.

Registration
and identifi-
cation mark
—*contd.*

the mark being obscured or rendered not easily distinguishable (3 Edw. 7, c. 36, s. 2 (iv.)).

But it is an answer to the charge for the driver to prove that he had no reasonable opportunity of registering the car, and that it was being driven on a highway for the purpose of being registered.

A driver may be convicted if the letters and figures of the identification mark are not of the *size* prescribed by the regulations, *post*, p. 1178 (*R. v. Gill; McKim, Ex parte* (cc)).

PENALTY FOR
OFFENCE
UNDER ACT
OF 1903.

FINE not exceeding 20*l.*, recoverable by *distress*, and, in default, imprisonment *without* hard labour, according to scale (p. 111). For a *second* offence the PENALTY is a fine not exceeding 50*l.*, or IMPRISONMENT, without hard labour, for THREE MONTHS (*ib.* s. 11 (i.)). As to the *illumination* of the BACK identification plate, see *post*, p. 736.

LICENSING OF
drivers.

Any person who has attained the age of seventeen years (unless disqualified under the Act) may obtain a licence to drive a motor car from the council of the county or county borough *in which he resides*. A licence limited to motor cycles may be obtained by a person over the age of fourteen years. The licence is subject to *annual* renewal; and anyone who already holds a licence is disqualified from obtaining another whilst the licence so held by him is in force. If a *disqualified* person (including in that term a person whose licence is suspended) applies for or obtains a licence while so disqualified, or if a person whose licence has been *endorsed* applies for or obtains a licence without giving particulars of the endorsement, he would be guilty of AN OFFENCE UNDER THE ACT of 1903, and the PENALTY would be as above (*ib.* ss. 3 (v.), 4 (v.)).

So, too, it is an OFFENCE UNDER THE ACT, subject to a like PENALTY,

Driving with-
out licence.

Form of
Information,
post, p. 1227.

Employing
unlicensed
driver.

Failure to
produce
licence.

(a) to drive a motor car on a public highway or a roadway to which the public are granted access, unless the driver be duly licensed; or

(3) to employ a person who is not so licensed to drive the car (*ib.* s. 3 (i.)).

Any person driving a motor car must produce a *licence* when demanded by a *police constable*. If the

(cc) (1909) 100 L. T. 858; 7 L. G. R. 589; 73 J. P. 290.

driver fails so to produce "his" licence he becomes liable to a PENALTY of 5*l.* (*ib.* s. 3 (iv.)).

If a person is convicted of (a) an OFFENCE UNDER THE ACT of 1903, or (β) of ANY offence in connection with the DRIVING of a motor car, other than a first or second offence consisting solely of *exceeding any limit of speed* fixed by the Act, the Court MUST—

3 EDW. 7,
c. 36, s. 4.

If the person so convicted holds a licence, cause particulars of the conviction and of any order of the court to be *endorsed* on the licence, and cause a copy of such particulars to be sent to the council granting the licence. If the licence holder fails to produce his licence for endorsement *within a reasonable time*, he is guilty of an OFFENCE UNDER THE ACT of 1903 (for PENALTY, see *ante*, p. 730). There is no objection to the information in respect of the failure to produce being laid by the person who laid the information for the original offence (cf. Home Office Circular, February 21st, 1905).

Endorsement
of licence.

And the Court MAY—

If the person so convicted holds a licence, suspend the licence for such time as may seem fit, and may also declare the defendant disqualified for obtaining a licence for such time as may seem fit;

Suspension of
licence.

If the person so convicted does not hold a licence, declare him disqualified for obtaining a licence for such time as may seem fit (*ib.* s. 4).

Disqualifica-
tion of
defendant.

The words "*any* offence in connection with the *driving* of a motor car" do not include the obstructing of a highway by leaving the car thereon (*R. v. Lyndon; Moffat, Ex parte*) (*c*³); while the exception as to "limit of speed" applies to *all* speed limits fixed lawfully and by proper authority, so that there is no power to endorse a driver's licence with particulars of a first or second conviction for exceeding a speed limit fixed under the Parks Regulation Act, 1872 (*R. v. Marsham*) (*c*⁴). This case was so decided although the exception in the Act of 1903 in terms refers only to limits of speed "fixed by the Act." It has, however, been held that driving a motor car in a Royal Park at a speed in excess of that prescribed by the orders made under the Parks Regulation

Decisions as
to indorse-
ment.

(*c*³) (1908) 72 J. P. 227.

(*c*⁴) [1907] 2 K. B. 638; 76 L. J. K. B. 1036; 71 J. P. 445.

Decisions as to
endorsement
—*contd.*

Act, 1872, is "an offence in connection with the driving of a motor car" within the Act of 1903, although the order prescribing the speed limit *did not exist* when the Act of 1903 came into operation. The licence is, therefore, subject to endorsement on the *third* conviction for exceeding the speed limit in the park (*R. v. Plowden*) (*c⁵*). This decision seems to have been rested on the ground that the *power* to make the parks' regulation already existed when the Act of 1903 came into operation. A conviction for using a car, the identification mark of which did not bear letters and figures of the size prescribed, may be endorsed on the licence as being a conviction for an offence under the Act of 1903 (*R. v. Gill; McKim, Ex parte, ante*, p. 730).

Appeal by
licensee.

A person whose licence is suspended or who is declared disqualified may APPEAL to quarter sessions, and, pending the appeal, the court may defer the operation of their order. But, if such person, during a period of suspension or disqualification, applies for or obtains a licence, he commits an OFFENCE UNDER THE ACT of 1903 (see *ante*, p. 730); and, as we have seen, a person whose licence has been endorsed commits a like offence if he applies for or obtains a licence without giving particulars of the endorsement (*ib. s. 4*).

Forgery of
licence or
mark.

It is an OFFENCE UNDER THE ACT of 1903 *fraudulently* to alter or use, or lend or allow to be used, or to *forge*, a licence or any identification mark (*ib. s. 5*). For PENALTY, see *ante*, p. 730.

EXCEEDING
SPEED LIMIT.
3 EDW. 7,
c. 36, s. 9.

Form of
Information,
post, p. 1226.

A motor car must not, in any circumstances, be driven on a public highway (or a roadway to which the public are granted access, see *ante*, p. 727) at a greater speed than *twenty miles an hour*, nor (within limits fixed by the Local Government Board on the application of a local authority) at a greater speed than *ten miles an hour*. If the Local Government Board make regulations as to the user of any particular highway, or as to limitations of speed within any area, the local authority must cause "public notice" to be given, and must place notices in conspicuous places near the highway or place to which the regulation refers (*ib. ss. 9, 10*).

(*c⁵*) [1909] 2 K. B. 269; 78 L. J. K. B. 733; 25 T. L. R. 430; 100 L. T. 856; 7 L. G. R. 584; 73 J. P. 266.

If a *driver* exceeds the *speed limit* he becomes liable to a PENALTY not exceeding 10*l.* : for a *second* offence, 20*l.* ; for a *third* offence, 50*l.* The fine is recoverable by *distress*, and, in default, imprisonment, *without* hard labour, according to scale (p. 111).

A driver cannot, however, be convicted unless he was “*warned* of the intended prosecution at the time the offence was committed, or unless *notice* of the intended prosecution was sent to him or to the owner of the car as entered on the register within such time after the offence is committed, *not exceeding twenty-one days*, as the court think reasonable” (cf. *Beresford v. St. Albans JJ.*) (*d*). A mere intimation of a possible prosecution will, it seems, suffice (*Jessop v. Clarke*) (*dd*). And it has even been held that leaving a notice with the porter employed at, and in charge of, the chambers where the defendant resided was *prima facie* evidence that it had been “sent” to the defendant (*Martin v. Brooman*) (*d*³).

Penalty.

Evidence necessary to support charge of exceeding speed limit.

Nor can the driver be convicted of exceeding the *twenty mile limit* “merely on the *opinion* of *one witness* as to the rate of speed”; but note that the word is “*opinion*,” not “*evidence*,” and it was held, accordingly, that a driver might be convicted on the testimony of a single constable who had taken the time by a stop-watch, so that the constable was able to speak to the rate as a matter of *fact* (*Plancq v. Marks*) (*e*). Where a car driven by the defendant was timed at two milestones four miles apart, it was held that (in the absence of evidence to the contrary) the defendant might be assumed to have been the driver of the car over the whole of the intervening distance (*Beresford v. St. Albans JJ.*) (*f*).

Warning motor car drivers of a “*police trap*” is not necessarily an “*obstruction of the police*” in the execution of their duty; at any rate, where the person giving the warning is not acting in concert with the drivers, nor connected with an association interested in

Warning driver of “police trap.

(*d*) (1905) 22 T. L. R. 1.

(*dd*) (1908) 99 L. T. 28; 72 J. P. 358; 6 L. G. R. 686.

(*d*³) (1909) 25 T. L. R. 783; 73 J. P. 484.

(*e*) (1906) 94 L. T. 577; 70 J. P. 216; 22 T. L. R. 432; 4 L. G. R. 503.

(*f*) *Supra* (*d*).

the driving of motor cars (*Bastable v. Little*) (*f*). But the agent of an automobile association, who warned drivers travelling at a speed in excess of the statutory limit that they were approaching a "police trap," and so prevented the procuring of evidence which would have led to their conviction, was held rightly convicted of obstruction (*Betts v. Stevens*) (*g*). Where a defendant had been convicted under s. 1 of driving in a manner dangerous to the public and the magistrate had taken into consideration (*inter alia*) the question of speed, which largely exceeded twenty miles an hour, the court (by a majority) decided that the magistrate was right in refusing to hear a second charge of exceeding the speed limit on the ground that the defendant could plead *autrefois convict*, or rather on the principle — *nemo debet bis vexari pro uno et eodem delicto* (*Welton v. Tanebourne*) (*gg*).

*Welton v.
Tanebourne.*

DRIVING
RECKLESSLY,
NEGLI-
GENTLY, AT
A DANGEROUS
SPEED, OR IN
A DANGEROUS
MANNER.
3 EDW. 7,
C. 36. SECT. 1.

*Form of In-
formation.*
post, p. 1226.

Owner failing
to supply
information.

Evidence on
a charge of
reckless or
dangerous
driving.

It is an OFFENCE UNDER THE ACT of 1903 to drive a motor car on a public highway, or on a roadway to which the public are granted access (*ante*, p. 727), (*a*) *recklessly* or *negligently*; or (*β*) at a speed or in a manner which is *dangerous* to the public, "having regard to all the circumstances of the case, including the nature, condition and use of the highway, and to the amount of traffic which actually is at the time, or which might reasonably be expected to be, on the highway" (*ib.* s. 1). If the driver committing such an offence (*a*) *refuses* to give his name or address, or (*β*) gives a false name or address, he is guilty of an additional OFFENCE UNDER THE ACT. And the owner of the car is also guilty of an OFFENCE UNDER THE ACT if he fails (when required) to give any information which he can give "and which may lead to the identification and apprehension of the driver" (*ib.* s. 1 (*iii.*)).

As to the PENALTY for an OFFENCE UNDER THE ACT, see *ante*, p. 730.

The conviction of an owner must aver that an offence was committed by the driver; but, to secure the

(*f*) [1907] 1 K. B. 59; 76 L. J. K. B. 77; 96 L. T. 115; 5 L. G. R. 279; 21 Cox, 354; 71 J. P. 52; 23 T. L. R. 38.

(*g*) [1910] 1 K. B. 1; 79 L. J. K. B. 17; 7 L. G. R. 1052; 26 T. L. R. 5; 73 J. P. 486.

(*gg*) (1908) 99 L. T. 668; 6 L. G. R. 891; 72 J. P. 419; 24 T. L. R. 873; 21 Cox, 702.

conviction of an owner, it is not necessary that the *driver* should have been asked for his name or address (*R. v. Hankey*) (*h*). As we have seen, driving at a dangerous speed is a separate offence from driving in a dangerous manner (*R. v. Wells*) (*i*); but, on a charge of driving in a dangerous manner, evidence of speed is, of course, relevant to the allegation of danger (*Hargreaves v. Baldwin*) (*j*). A toll collector, after warning, took hold of a car in motion, was carried along for a time, and then fell to the ground; but it was held that these facts did not constitute any evidence of reckless driving, as the section strikes at driving which is reckless with regard to the public as distinguished from the passengers in the car (*Troughton v. Manning*) (*k*). On an information for driving at an excessive speed, evidence may be given as to the traffic which might reasonably be expected to be on the highway (*Elwes v. Hopkins*) (*l*). A person summoned for driving at an excessive speed may be convicted although it appears that he was not actually driving, if he was in fact *aiding and abetting* the commission of the offence (*Du Cros v. Lambourne*) (*m*).

RECKLESS
DRIVING
—*contd.*

A police constable may, *without warrant*, apprehend the *driver* of a car guilty of reckless, negligent, or dangerous driving within this section, in case such driver *refuses* to give his name and address or produce his licence on demand, *or* if the motor car does not bear the mark or marks of identification (*ib. s. 1 (ii.)*). And as to the power of arrest, see further *ante*, pp. 420, 421.

Apprehension
of driver
under 3 Edw.
7, c. 36, s. 1.

From *one hour after sunset to one hour before sunrise*, the *person in charge* of a motor car must carry attached thereto a *lamp* so constructed and placed as to exhibit a light in accordance with the Local Government Board Regulations, *i.e.*, so as to exhibit a *white* light visible within a reasonable distance in the direction towards

LIGHTS to be
carried.

(*h*) [1905] 2 K. B. 687; 74 L. J. K. B. 922; 69 J. P. 219.

(*i*) *Ante*, p. 99.

(*j*) (1905) 93 L. T. 311; 69 J. P. 397.

(*k*) (1905) 92 L. T. 855; 69 J. P. 207; 53 W. R. 493; 3 L. G. R. 548.

(*l*) [1906] 2 K. B. 1; 75 L. J. K. B. 450; 94 L. T. 547; 70 J. P. 262.

(*m*) [1907] 1 K. B. 40; 76 L. J. K. B. 50; 70 J. P. 525; and see *ante*, p. 149.

Forms of
Information,
post, p. 1227.

Penalty.

Illumination
of back
identification
plate.

which the car is intended to proceed, and a *red* light so visible in the reverse direction. The lamp must be free from all obstruction and placed on the *extreme right or offside* of the car; but, if a lamp at the *back* of the car (such as is often used to illuminate the identification plate) exhibits the *red* light, the other lamp need not show a red light. If any person drives or has charge of a car used on a highway or a roadway to which the public are granted access (or causes or permits it to be so used), when this requirement is not satisfied he becomes liable to a PENALTY not exceeding 10*l.*, recoverable by *distress*, and, in default, imprisonment *without* hard labour according to scale (p. 111). The offence, it seems, is one "in connection with the driving" of the car, so that a conviction must be endorsed on the licence; see Home Office Circular, February 21st, 1905 (59 & 60 Vict. c. 36, ss. 2, 7; Order of 1904, Article II., APPENDIX, p. 1187). The Regulations of the Local Government Board also require, under a like penalty, the carrying of a lamp so contrived as to illuminate and render easily distinguishable every letter or figure on the *back identification plate*. In a motor *cycle* the *front* identification plate may be substituted for the back (Order of 1903, Article XI., APPENDIX, p. 1168). The article does not state, in terms, on whom responsibility rests; but, where the lamp of a motor cab was hung too low so that the light was shewn *beneath* the plate, a conviction of *the company who owned the cab* for "aiding and abetting" the driver was affirmed, on the ground that there was evidence that the cab was sent out by persons for whom the company was responsible in a condition which did not conform with the regulation. A proper and permanent bracket had been provided on which to hang the lamp, and it was the duty of the foreman to see that the cars went out all right (*Provincial Motor Cab Co. v. Dunning*) (*mm*).

BELL, &C., to
be carried.

The motor car must carry a *bell or other warning instrument*, and the *person driving or in charge* of the car when used on a highway must, whenever necessary, by sounding this bell or other instrument, give *audible and sufficient warning* of the approach or position of the car,

(*mm*) [1909] 2 K. B. 599; 78 L. J. K. B. 822; 25 T. L. R. 646; 7 L. G. R. 765; 25 T. L. R. 646; 101 L. T. 231; 73 J. P. 387.

otherwise he becomes liable to a PENALTY not exceeding 10*l.*, recoverable similarly (59 & 60 Vict. c. 36, ss. 3, 7; Order of 1904, Article IV., APPENDIX, p. 1188).

If, owing to the presence of a motor car on the road, an ACCIDENT occurs to any person (whether on foot, on horseback or in a vehicle), or to any horse or vehicle, the car driver must *stop* and, (*if required*), give his *name and address*, the name and address of the owner, and the registration mark of the car. The PENALTY for knowingly acting in contravention of this section is 10*l.* for a first offence and 20*l.* for a second offence; while for a *third or subsequent* offence the offender may be fined 20*l.* or imprisoned for ONE MONTH without the option of fine (3 Edw. 7, c. 36, s. 6).

Under the Regulations of the Local Government Board the driver or person in charge of the car must, on the request of *any police constable in uniform* or of *any person in charge of a horse* (or if any such constable or person put up his hand as a signal for the purpose) cause the car to stop and remain stationary so long as may be reasonably necessary (Order of 1904, Article IV.). This and many other regulations of the Local Government Board as to the driving and conduct of motor cars are set forth in the APPENDIX, *post*, pp. 1166—1202. The council of a county or county borough may, moreover, make *bye-laws* as to use of *any bridge* within their area (59 & 60 Vict. c. 36, s. 1 (i.)). The PENALTY for breach of any such REGULATION or BYE-LAW is a *fine* not exceeding 10*l.* (*ib.* s. 7).

As to the keeping and use of *petroleum* or other inflammable liquid or fuel, see title PETROLEUM, *post*, p. 761, and Order of July 31st, 1907, APPENDIX, p. 1203.

Special and elaborate Regulations as to the speed, user and construction of HEAVY MOTOR CARS, *i.e.*, cars exceeding two tons in weight unladen, are contained in the *Heavy Motor Car Order of 1904*, see 3 Edw. 7, c. 36, s. 12 (ii.), and APPENDIX, pp. 1190—1202.

APPEAL lies to quarter sessions against a conviction under the Act of 1903 (3 Edw. 7, c. 36, s. 11 (ii.)) where the fine exclusive of costs exceeds 20*s.* (*cf. R. v. Novis*) (*n*); but, apparently, no such appeal lies against a conviction

Driver to stop in case of ACCIDENT.

Penalty.

Driver to stop at signal from CONSTABLE IN UNIFORM, OR PERSON IN CHARGE OF A HORSE.

P. 1189.

Bye-laws as to bridge.

Penalty.

Petroleum.

HEAVY MOTOR CARS.

Appeal.

(*n*) *Ante*, p. 155.

under the Act of 1896 (59 & 60 Vict. c. 36) or for a breach of the Regulations.

As to other offences relating to the user of Motor Cars on Highways, see title DRIVING, *ante*, p. 420.

MURDER AND MANSLAUGHTER.

The felonies known as murder and manslaughter cannot, under any circumstances, be dealt with except by a judge and jury at the assizes. It is, therefore, only necessary to indicate the nature of these crimes sufficiently to enable justices to determine whether a *prima facie* case is made out fit to be submitted to a jury.

Presumption
that homicide
is murder.

Homicide is the general term applied to the destruction of the life of a human being, including, of course, a newly-born infant, but excluding the case of a child destroyed before it has been actually born into the world in a living state (cf. Stephen's "Digest of Crim. Law," 6th edit., Art. 239). Every homicide is presumed to be MURDER until the contrary is shown, that is, until it is shown to have been justified by the command of the law or in self-defence, or to have been excusable on the ground of accident or misadventure, or to have been committed under circumstances reducing the crime to manslaughter.

Criminal homicide may be direct, as by striking, starving, or poisoning, *i.e.*, it may be occasioned by the doing of some act which was intended to result in death or bodily injury; or it may be occasioned by some act or omission of which the accused must be taken to have foreseen that the death which occurred was among the probable or possible consequences. It is sufficient if the death was *accelerated* by the unlawful act or omission, but it must have taken place within *a year and a day* from the date of such act or omission, otherwise the accused cannot be rendered accountable (cf. *R. v. Dyson*) (*nn*).

Death caused
by neglect.

If the death was caused by the *omission* of the accused to perform a particular duty, it must appear that such duty was *personal*, and the neglect immediately connected with the death, as in the case of careless driving on a railway, or of not supplying an infant with food (*R. v. Pocock*) (*o*); or of a wilful omission to take the

(*nn*) [1908] 2 K. B. 454; 77 L. J. K. B. 813; 21 Cox, 669.

(*o*) (1851) 17 Q. B. 34.

necessary steps for the protection of infant life and health, as where a member of the "peculiar people" refused to summon medical aid (*R. v. Senior*) (*p*). But a conviction could not be sustained if, *e.g.*, trustees were under statutory obligation to repair a road, and a person using the road were accidentally killed by reason of the neglect of the trustees to direct necessary repairs to be undertaken. Where, however, the negligence is *personal*, "an *intentional* omission to discharge legal duty always constitutes *culpable* negligence" (Stephen's Digest, 6th edit., p. 169).

"Moreover, to render a person who has the charge of another criminally responsible for neglect, there must be on the part of such person a duty arising from the helpless character of the person who is under control. Such a duty, for instance, arises in the case of those who have charge of infants, invalids, or lunatics. So, also, such a duty arises where the person exercising restraint exercises it to such an extent as to entirely deprive the person who is subject to it of all liberty whatever" (*R. v. Smith*) (*q*); and see *R. v. Instan* (*r*)).

When an assailant endeavours by violence or surprise to commit a felony such as rape, robbery, burglary, or the like, it is permissible, in defence of one's person or property, to repel force by reasonable force without regard to the consequences; while a servant or other person may lawfully assist the person assailed in thus preventing the crime; and as to "self-defence," see further, *ante*, p. 276. But, unless an act of homicide falls strictly within the regions of excuse or justification, it amounts, as we have seen, either to actual murder, or to the minor offence of killing unlawfully, *but without malice aforethought*, which offence is known as MANSLAUGHTER (24 & 25 Vict. c. 100, s. 5).

The law does not supply any definite test to determine the existence of "malice aforethought"; but the legal presumption of malice may, in many cases, be readily rebutted by the general circumstances attending the wrongful act or omission, as, *e.g.*, where three volunteers

Self-defence.

When the crime is reduced to manslaughter.

(*p*) [1899] 1 Q. B. 283; 68 L. J. Q. B. 175; 79 L. T. 562; 49 W. R. 367; 68 J. P. 8.

(*q*) (1865) L. & C. 629.

(*r*) (1893) 62 L. J. M. C. 56.

carried on rifle practice in private grounds and killed a boy in a tree nearly a quarter of a mile away (*R. v. Salmon*) (s); or where a surgeon, acting in good faith but with gross negligence and want of skill, causes the death of his patient (*R. v. Whitehead*) (t). As to the circumstances in which the DRUNKENNESS of the accused will be allowed to rebut a presumption that grievous bodily harm was intended, see *R. v. Meade* (tt).

Personal
conflicts.

If a fight takes place between two men, and one of the combatants is killed by his adversary, the survivor is guilty of unlawful homicide unless he can show that "before mortal stroke given he had declined any further combat, and retreated as far as he could with safety, and also that he killed his adversary through mere necessity, and to avoid immediate death." If the fight took place upon fair terms and merely with fists, or if it took place upon a sudden quarrel, the crime would be manslaughter and not murder. So also, if a man be greatly provoked by some outrageous act of personal aggression other than mere words or gestures, and immediately kills his assailant, the act, although not within the excuse of self-defence, may nevertheless be manslaughter and not murder, there being no evidence of malicious intention previously existing in the mind of the accused. But it would probably be otherwise if the accused had used a knife or dangerous weapon, which, in anticipation of a fight, he had placed ready to hand: and in every case of homicide upon provocation, if there be sufficient time for anger or resentment to cool, and the person provoked afterwards kill the other, the crime is undoubtedly murder. As to provocation by words, see *R. v. Jones* (t₃).

Provocation.

Moreover, if, in any case, the violence be out of all proportion to the provocation offered, this will in itself be an indication of a malicious mind sufficient to render the crime murder and not manslaughter.

Contributory
negligence.

It is usually stated that contributory negligence is no defence to a charge of manslaughter. "The prisoners,"

(s) (1881) 6 Q. B. D. 79; 50 L. J. M. C. 25; 45 J. P. 270.

(t) (1848) 3 C. & K. 202.

(tt) [1909] 1 K. B. 895; 78 L. J. K. B. 476; 53 S. J. 378; 25 T. L. R. 359; 73 J. P. 239.

(t₃) (1908) 72 J. P. 215.

said Pollock, C.B., in *R. v. Swindall* (u), “are charged with contributing to the death of the deceased by their negligence and improper conduct, and, if they did so, it matters not whether he was deaf, or drunk, or negligent, or in part contributed to his own death. For in this consists a great distinction between civil and criminal proceedings.” But, as is suggested in Archbold’s *Crim. Pl.* (23rd edit., p. 801), “evidence, which in a civil case might be given to prove contributory negligence, might, in a criminal case, be relevant to show that the death of the deceased was *not due* to the *culpable negligence* of the accused.”

When a felon attempts to escape from justice, anyone may apprehend him and may use every means to prevent his escape; and if, in the course of the pursuit, the felon is killed, the homicide will be justifiable provided that he could not otherwise have been prevented from escaping. And the killing of an officer of justice effecting an arrest in the execution of his duty, or, indeed, the killing of a private person lawfully apprehending a felon or endeavouring to suppress an affray, is counted a malicious homicide, and, therefore, murder.

Preventing escape of a felon.

Killing person lawfully effecting arrest.

It is, too, an ancient doctrine of the law that if a man, in the act of attempting or committing any *felony*, undesignedly kills another, the presumption of malice is incontrovertible; unless, perhaps, the chance of killing were so slight that no reasonable man would contemplate it. Again, where two or more persons join in any unlawful act against the peace, of which the probable consequence may be bloodshed, as, for instance, to beat a man or create a riot, and one of them happens to kill anybody, this is murder in them all, because of the *mala praeconitata*, or evil intended beforehand. But it is submitted that it would nowadays be held (if a person, in committing or attempting to commit a crime, whether felony or not, undesignedly killed another) that the offence amounted to manslaughter only; unless, indeed, the act were a crime of such a dangerous character as to be likely to cause death or grievous bodily harm (*e.g.*, arson or abortion), in which case, if death ensued from

Killing undesignedly whilst in the act of committing a felony, &c.

(u) (1846) 2 C. & K. 230; 2 Cox, 141.

the commission of the crime, the person committing it would clearly be guilty of murder (cf. *R. v. Sernè*) (*x*).

Agreement to
commit
suicide.

It may be added, that where two persons mutually agree to commit suicide, and one of them survives, he is deemed to be guilty of murder (*R. v. Jessop*) (*y*); *R. v. Abbott* (*z*); and, although a man may kill another as a last resource in defending himself, yet he may not take another's life to save his own, even under circumstances of dire necessity (*R. v. Dudley*) (*a*).

Dying
declarations
admissible in
evidence.

Any statement made by a *dying person* as to the cause of his death, or touching the infliction of the injury of which he is dying, may be given in evidence at any subsequent trial for the murder or manslaughter of the declarant. Under such circumstances the law presumes that the moral inducement to speak the truth will be sufficiently powerful without the additional obligation of an oath; but the person making the declaration must entertain a *settled, hopeless expectation of death*. It is not sufficient if the dying man declares that he has "no hope at present" of recovery (*R. v. Jenkins*) (*b*). The test of the admissibility of such a declaration is whether "the declarant at the time it was made had an unqualified belief in the nearness of death, that is to say, a belief without hope that he was about to die" (per *Charles, J.*, *R. v. Gloster*) (*c*). It is not necessary to prove that the declarant believed that death would ensue *immediately* (*R. v. Perry*) (*cc*). And cf. *R. v. Whitmarsh* (*d*).

Statements taken down as answers to questions propounded by a magistrate have been held inadmissible as a "dying declaration" (*R. v. Smith*) (*e*). As to taking the *sworn* deposition of the dying man, see *ante*, p. 128.

Place of trial.

Wheresoever the murder or manslaughter may have taken place (if it were *on land*), the accused may be tried

(*x*) (1888) 16 Cox, 311.

(*y*) (1887) 16 Cox, 204.

(*z*) (1903) 67 J. P. 151.

(*a*) (1885) 14 Q. B. D. 273; 54 L. J. M. C. 32; 52 L. T. 107; 49 J. P. 69.

(*b*) (1869) L. R. 1 C. C. R. 187; 38 L. J. M. C. 82; 20 L. T. 372; 33 J. P. 452.

(*c*) (1888) 16 Cox, 471.

(*cc*) [1909] 2 K. B. 697; 78 L. J. K. B. 1034; 53 S. J. 810; 73 J. P. 456; 101 L. T. 127; 25 T. L. R. 676.

(*d*) (1898) 62 J. P. 680.

(*e*) (1901) 65 J. P. 426.

in England provided that he is a subject of the Crown and can be brought to this country for trial (24 & 25 Vict. c. 100, s. 9); as to the high seas, see *ante*, p. 9. And if the victim die in England, although the injury may have been caused elsewhere, or if the victim die abroad and the injury were inflicted in England, the offence is triable in England where the death or injury happened (*ib.* s. 10).

An attempt to murder by poison, drowning, shooting, wounding, the use of explosives, or otherwise, is a statutory felony triable at assizes only, and punishable with penal servitude for life (*ib.* ss. 11—15).

And all persons who conspire, confederate, and agree to murder anyone, whether a subject of the Crown or not, or whether he be within the dominions of the Crown or not, are guilty of *misdemeanour* punishable with ten years' penal servitude and triable only at assizes. While a like offence is committed by any person who solicits, encourages, or persuades, or endeavours to persuade, or proposes to, any other person to be guilty of such a crime (*ib.* s. 4) (*R. v. Most*) (*f*). The offence is not complete unless it can be shown that there has been some communication to the person whom the accused is alleged to have solicited, &c., although it is not necessary to show that the mind of such person would be affected by such communication (per *Alverstone, C.J., R. v. Krause*) (*g*).

As to the MANSLAUGHTER of juveniles under sixteen who have been cruelly treated, see *ante*, p. 374. And as to the procedure on any charge of manslaughter of such a juvenile, see *ante*, p. 379.

MUSIC AND DANCING.

Within the administrative county of Middlesex, any person who keeps or uses a place for public dancing, music, or other public entertainment of a like kind, without a licence from the county council, or who commits any breach of the conditions of such a licence, is liable, on summary conviction, to certain pecuniary penalties (57 & 58 Vict. c. 15).

(*f*) (1881) 7 Q. B. D. 244; 50 L. J. M. C. 113; 44 L. T. 823.

(*g*) (1902) 66 J. P. 121.

Beyond the
county of
Middlesex.
PUBLIC
HEALTH ACT.
1890.

In places *outside the above limit* licences are *not* required, except under local Acts (cf., *e.g.*, 25 Geo. 2, c. 36, which extends to the area within twenty miles of London, but is now repealed so far as Middlesex is concerned), or where the local authority has *ADOPTED* the fourth part of the PUBLIC HEALTH ACTS AMENDMENT ACT, 1890.

Under the last-mentioned Act, the occupier of every house, room, garden, or other place *kept or used* for public music, dancing, singing, or other like entertainment, must procure a licence from the licensing justices of the licensing district within six months of the adoption of the Act (53 & 54 Vict. c. 59, s. 51 (i.)). As to the notices prior to application, see *ib.* sub-s. (iv.). Where a local Act provided that justices might grant licences "at any special session convened by fourteen days' previous notice," it was held incompetent for the justices to lay down a rule that application should be made only at the general annual licensing meeting (*R. v. Oldham ; Ex parte Mellon*) (*gg*).

Decisions.

A publican, who provides a piano in the smoke room of his inn and permits his customers to use it for their own diversion, does not require a licence (*Brearley v. Morley*) (*h*).

A single entertainment, or the temporary use of a room for the above purposes, will not justify a conviction for "keeping." The word "keep" points to something like a habitual keeping (*Gregory v. Tuffs*) (*i*); cf. *ante*, p. 673. Moreover, the music or dancing must form a substantial part of the entertainment (*Guaglieni v. Matthews*) (*k*); *Syers v. Conquest* (*l*)); but the proprietor of a skating-rink where music was played was held to come within an earlier Act, apparently on the ground that the "rinking" was, under the circumstances, "dancing" to music (*R. v. Tucker*) (*m*).

Penalty
where licence
NOT obtained.

If the licence is not obtained, the place is deemed a disorderly house, and the occupier or person rated as

(*gg*) (1909) 101 L. T. 430; 73 J. P. 390.

(*h*) [1899] 2 Q. B. 121; 68 L. J. Q. B. 722; 47 W. R. 574; 80 L. T. 801; 63 J. P. 582.

(*i*) (1833) 6 C. & P. 271.

(*k*) (1865) 34 L. J. M. C. 116.

(*l*) (1873) 37 J. P. 342.

(*m*) (1877) 2 Q. B. D. 417; 46 L. J. M. C. 197; 41 J. P. 294.

the occupier is liable to a PENALTY of 5*l.* for each day on which it is kept open (*ib.* s. 51, sub-s. (v.)).

So, also, if a licence is obtained, and any of its terms or the *conditions* upon which it was granted, are disregarded, the holder is liable to a PENALTY of 20*l.* and a daily penalty of 5*l.* The court may, too, revoke the licence (*ib.* sub-s. (ix.)).

Penalty for
breach of
conditions.

In granting a licence for a hall in connection with a public-house, it was held that justices might impose as a condition that at least 3*d.* should be charged for admission, which should not be returned in the form of refreshment (*Richards, Ex parte*) (*n*).

Offenders are to be proceeded against as under the Public Health Acts, and the penalties will, therefore, be recoverable by *distress*, and, in default, imprisonment, *without* hard labour, according to scale (p. 111). Half the penalty is payable to the informer and half to the local authority. APPEAL lies to quarter sessions against a conviction.

Recovery of
penalties.

Justices in *petty sessions* may grant *temporary* licences for not more than *fourteen days*, although the applicant has not given any of the notices required by the Act in the case of an application for a new licence or a transfer (*ib.* sub-s. (xi.)).

Temporary
licences.

As to licences for the use of *baths* for music and dancing, see 62 & 63 Vict. c. 29, s. 2.

Baths and
Washhouses
Act, 1899.

As to *stage plays*, see title THEATRE, *post*, p. 902.

MUSICAL COPYRIGHT.

If a *pirated copy* of any *musical work* (*i.e.*, any combination of melody and harmony, or either of them, printed, reduced to writing, or otherwise graphically produced or reproduced) is *hawked*, *carried about*, *sold*, or *offered for sale*, such copy may be *seized* without warrant by a constable, on the *written request* (and at the risk) of the owner of the copyright, or his agent "thereto authorized in writing." Any copies so seized must be conveyed by the constable before a court of summary jurisdiction, and a *summons* may then be served on the person from whom the copies have been taken; and, on

Forfeiture,
&c., of pirated
copies taken
from hawkers,
&c., at request
of owner of
copyright.

ACT OF 1902.

Form of In-
formation,
post, p. 1227.

evidence of the written request of the apparent owner, and, if need be, of the agent's authority, coupled with proof that they are *infringements of copyright*, the court of summary jurisdiction may ORDER the copies to be FORFEITED, or destroyed or otherwise dealt with as the court may think fit (2 Edw. 7, c. 15, ss. 2, 3). Cf. *Ex parte Francis*, cited *ante*, p. 61.

Order for
destruction,
&c., of copies
seized under
authority of
justices.

ACT OF 1902.

On the application of the owner of the copyright, and on evidence that there is reasonable ground for believing that such pirated copies are being hawked, carried about, sold, or offered for sale, a court of summary jurisdiction may, by order, authorize a constable to seize them without warrant and bring them before the court—even although it appears that the music is being sold at a private house (*Ex parte Francis*, Day & Hunter (No. 2) (o)). The court may then, on proof of piracy, ORDER the copies to be DESTROYED, or delivered up to the owner of the copyright on his application (*ib.* s. 1). As to the power to issue a SEARCH WARRANT, see *post*, p. 747.

Perforated
music rolls.

A *perforated music-roll* which, when part of a mechanical instrument known as a piano player, produces the notes of a pianoforte accompaniment of a copyright song in much the same way as when the accompaniment is played on a piano with the fingers, is *not* a “pirated copy of a musical work” within the Act of 1902. The definition of “pirated musical work” in s. 3 does not in any way alter or enlarge the meaning of the words “pirated copy” of a musical work (*Mabe v. Connor*) (oo).

Unless he *proves that he acted innocently*, every one commits an OFFENCE who—

Penalty for
printing,
having in
possession for
sale, &c.,
pirated copies.

ACT OF 1906.

- (a) *prints*, reproduces, or *sells*, or exposes, offers, or has in his possession, for sale, any *pirated copies* of a musical work, or
- (β) has in his possession any *plates* (as defined by s. 3) for the purpose of *printing* or reproducing pirated copies of any musical work.

But, if the accused has *not been previously convicted* of such an offence, and he proves that the copies had *printed on the title page a name and address* purporting to be that

(o) (1903) 88 L. T. 806; 67 J. P. 301; 51 W. R. 698.

(oo) [1909] 1 K. B. 515; 78 L. J. K. B. 342; 100 L. T. 449; 25 T. L. R. 217; 73 J. P. 109.

of the printer or publisher, he is *not liable* to a penalty unless it is *proved* that the copies were to his knowledge *pirated* copies (6 Edw. 7, c. 36, s. 1 (i.)).

PENALTY.—*First offence*.—FINE not exceeding 5*l.* and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111).

Second offence.—IMPRISONMENT, with or without hard labour, for not more than TWO MONTHS; or FINE not exceeding 10*l.*

APPEAL lies against a conviction to quarter sessions Appeal.
(*ib.* s. 1 (iv.)).

“Musical work,” in the Act of 1906, means one in which there is a *subsisting copyright*, and which has been *registered* in accordance with the provisions of the Copyright Act, 1842, or of the International Copyright Act, 1844, which registration may be effected notwithstanding anything in the International Copyright Act, 1886 (*ib.* s. 3).

As to the issue of *certified copies* of entries in the registry and their reception in evidence, see s. 11 of the Copyright Act, 1842 (5 & 6 Vict. c. 45).

The *apparent owner* of copyright, or his agent authorized in writing, may address to the chief officer of police a general written authority, signed by such owner or his agent, requesting the arrest, at the risk of such owner, of all persons found committing offences in respect of any specified musical works. A constable may then arrest without warrant any person who, in any street or public place, sells, or exposes, offers, or has in his possession for sale any pirated copies of such works, or any one who offers for sale pirated copies of such works by personal canvass or by personally delivering advertisements or circulars (6 Edw. 7, c. 36, s. 1 (ii.)). A copy of any such written authority is to be open to inspection, &c., without fee (*ib.* s. 1 (iii.)).

If satisfied by information on oath that there is reasonable ground for suspecting that an offence is being committed, a court of summary jurisdiction may grant a SEARCH WARRANT authorizing the forcible entry of premises between 6 A.M. and 9 P.M., and the seizure of copies and plates. Such copies or plates must be brought before a court, and, if proved to be pirated copies or plates intended to be used for the printing or reproduction of pirated copies, they must be *forfeited and destroyed*, or otherwise dealt with as the court thinks fit (*ib.* s. 2).

Definition of
“musical
work” in ACT
OF 1906.

Proof of
registration.

Arrest under
authority of
owner of
copyright
addressed to
chief of police.
ACT OF 1906.

Search
warrant, and
forfeiture of
pirated
copies, &c.,
seized there-
under.
ACT OF 1906.

NUISANCES.

See PUBLIC HEALTH, under titles "Nuisances," "Offensive Trades," &c., *post*, pp. 831, 837; BROTHELS, *ante*, p. 344; GAMING, *ante*, p. 508; HIGHWAYS, *ante*, p. 535; and POLICE OF TOWNS, *post*, p. 772.

OATHS.

Declarations
before
justices.

Justices are authorized to take the voluntary *declaration* of any person, provided that it is *necessary or proper for the confirmation of* written instruments or allegations, or proof of debts, or of the execution of deeds, *or other matters* (5 & 6 Will. 4, c. 62, s. 18). As to the stamp duty on statutory declarations before justices, see 54 & 55 Vict. c. 39, First Schedule; and see s. 21 of the "Interpretation Act," *post*, p. 1069.

Anyone who makes a declaration under the above Act which he knows to be untrue in any material particular is guilty of an indictable *misdemeanour*, triable at assizes only (5 & 6 Will. 4, c. 62, s. 21).

Unlawful
administra-
tion of oaths.

Cf. OATHS
ACT, 1909,
ante, p. 55.

Any justice or other person administering *an oath* or solemn affirmation when not authorized by law to do so is guilty of an indictable *misdemeanour*, and liable to fine and imprisonment (*ib.* s. 13). "Again, the administration of an oath to commit a capital felony is punishable with penal servitude for life, the offence being triable at assizes only (52 Geo. 3, c. 104, s. 1); while the administration of, or being present at and consenting to the administration of, or the voluntary taking of, any oath or engagement to disturb the public peace, or to engage in seditious practices, is a crime punishable with penal servitude for seven years, and is triable at assizes only (37 Geo. 3, c. 123, s. 1).

As to the administration of oaths to witnesses, see *ante*, p. 83; and see PERJURY, *post*, p. 758.

OLD METAL DEALERS.

Definition.

The term DEALER IN OLD METALS is defined to mean "any person dealing in, buying, and selling old metal, scrap metal, broken metal, or partly manufactured metal goods, or defaced or old metal goods, and whether such person deals in such articles only, or together with

second-hand goods or marine stores." And the term *old metals* is defined to mean the said articles (24 & 25 Vict. c. 110, s. 3). Meaning of "old metal."

No *such dealer* may purchase, at any one time, less than 112 POUNDS of *lead*, or any composite of which lead is the principal ingredient; nor less than 56 POUNDS of *copper, brass, tin, pewter, German silver, or spelter*, or any composite of which the principal ingredient is one of these metals. If he does purchase, personally or through his servant, less than the prescribed quantity, whether new or old, he becomes liable to a Purchasing less than prescribed weight.

PENALTY of 5*l.*, recoverable by *distress*, and, in default, imprisonment, *without* hard labour, according to scale (p. 111) (34 & 35 Vict. c. 112, s. 13).

It is of the essence of the offence that the accused should be a "dealer in old metals" (*Adams v. McKenna*) (p).

A like PENALTY will be incurred if the dealer purchase from a person *apparently* under *sixteen* years any "old metal," as above defined, whether offered for sale by that person on his own behalf or on behalf of any other person (8 Edw. 7, c. 67, s. 116). It is, of course, a defence to prove that the person was *actually* of or over the age of sixteen (*ib.* s. 123 (iv)). Purchase from juvenile.

Any justice, upon complaint on oath that any "old metal," unlawfully obtained, is kept by a dealer in any place within his jurisdiction, may, by warrant, authorize a constable to enter, in the daytime, and seize all such old metals there found, and carry them before him or some other justice having jurisdiction. The justice must then issue a summons, calling upon the dealer to appear before the court; and, if such dealer fail to give to the justices satisfactory proof how he came by the articles, he is liable to a penalty. So, too, a dealer is liable to a like penalty (although no such warrant has issued) if, having been found in possession of "old metal" which has been stolen or unlawfully obtained, he is taken or summoned before justices, and it is proved to their satisfaction that at the time when he received it he had reasonable cause to believe it to have been stolen or unlawfully obtained (24 & 25 Vict. c. 110, s. 4):— Search warrant.

Liability of dealer found in possession of articles stolen or unlawfully obtained.

First offence.—FINE, not exceeding 5*l.*, recoverable by Penalty.

Possession of metal unlawfully obtained.

distress, and, in default, imprisonment, *without* hard labour, according to scale (p. 111).

Second offence.—FINE, not exceeding 20*l.*, recoverable similarly; or, IMPRISONMENT for not more than THREE MONTHS, with or without hard labour.

Any part of the penalty may be awarded as compensation to an injured party (*ib.* s. 10).

APPEAL lies to the quarter sessions against a conviction (*ib.* s. 11).

Of course the defendant may be indicted as a “receiver,” instead of being dealt with summarily, in case the old metal was stolen.

After conviction dealer may be registered.

Any dealer in old metals who has been convicted under 24 & 25 Vict. c. 110, s. 4 (*ante*, p. 749), may be ordered by the convicting justices (or subsequently by any two justices of the same petty sessional division) to be placed upon the REGISTER of the principal police office of the division, and he must thereupon, for a fixed term not exceeding three years, conform to certain strict regulations in conducting his business (*ib.* s. 5). He must (a) keep books, in the prescribed form, showing particulars of his dealings, and, when required, produce such books and any old metals to the police; (b) abstain from purchasing or receiving old metals between 6 P.M. and 9 A.M., and from purchasing them from anyone under sixteen; (c) abstain from employing servants under sixteen to purchase or receive old metals; (d) keep old metals forty-eight hours without changing their form; and (e) give notice to the police as to articles answering the description of stolen articles.

Effect of registration.

Breach of regulations by registered dealer.

In case a *dealer so registered* fails to conform to such regulations, he is liable to a PENALTY of 5*l.* for a first offence; and for a second offence to a fine not exceeding 20*l.*, but not less than 5*l.* (*ib.* s. 8). The fines are recoverable by distress as above.

Notice of removal.

So, too, if a dealer thus registered fails to notify to the police the fact of the *removal* of his place of business, he is liable to a PENALTY of 5*l.*, and not exceeding 10*s.* a day so long as he continues to carry on the business (*ib.* s. 6).

The registered dealer may APPEAL to quarter sessions against a conviction if the fine and costs EXCEED 5*l.* (*ib.* s. 11).

Any portion of a penalty may be awarded as compensation to an injured party (*ib. s. 10*).

In districts to which Part VII. of the *Public Health Act*, 1907, has been APPLIED, special provisions as to the registration of old metal dealers and marine store dealers are in operation. The Act requires the dealer to keep books, and gives a right of entry upon the premises to persons authorized in that behalf by the authority (7 Edw. 7, c. 53, s. 86).

PUBLIC
HEALTH ACT
1907.

As to "marine" store dealers, see Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60, ss. 538—543); and, 8 Edw. 7, c. 67, s. 116; *ante*, p. 749.

Marine store
dealers.

PATENTS AND DESIGNS ACT, 1907.

Every one commits an offence who

(a) *After the copyright in a design has expired*, puts or causes to be put on any article to which the design has been applied the word "REGISTERED," or any words implying that there is a *subsisting copyright* in the design (7 Edw. 7, c. 29, s. 89 (iv.)) [the word "design" is defined by s. 93 of the same Act]; or

Falsely
representing
article to be
"copyright,"
"patented,"
&c.

(β) *Falsely represents* that any article sold by him is a *patented* article, or falsely describes any *design applied* to an article sold by him as *registered* (*ib. s. 89 (ii.)*). If the word "patent," "patented," "registered" (or any word implying that an article is patented or a design registered) be stamped on or otherwise applied to an article when sold, the seller is presumed to represent that the article is patented or the design registered (*ib. s. 89 (iii.)*).

PENALTY.—FINE, not exceeding 5*l.*, and, in default of distress, imprisonment *without* hard labour, according to scale (p. 111).

Anyone who *uses* on his place of business (or on any document issued by him, or otherwise) the words "PATENT OFFICE," or any words suggesting that his *place of business* is officially connected with, or is, the *Patent Office*, becomes liable to a PENALTY of 20*l.*, recoverable similarly (*ib. s. 89 (v.)*).

Representa-
tions as to
Patent Office.

It is a *misdemeanour* punishable on indictment to (a) make or cause to be made a *false entry* in a register kept under the Act, or a writing falsely purporting to be a copy of an entry in such register; or (β) *produce*

False entries
in register.

or tender, or cause to be produced or tendered, in evidence, any such writing, *knowing the entry or writing to be false* (*ib.* s. 89 (i.)).

Acting as a
patent agent
without
registration.

Any person who knowingly describes himself as a *patent agent*, whether by advertisement, by description on his place of business, by any document issued by him or otherwise (unless he be duly registered as such) is liable to a PENALTY of 20*l.* recoverable by *distress*; and, in default, imprisonment, *without* hard labour, according to scale (p. 111) (7 Edw. 7, c. 29, s. 84).

Assumption of
Royal Arms.

The PENALTY for an unauthorized assumption of the Royal Arms (or arms so nearly resembling those as to be calculated to deceive) is 20*l.* The right (if any) of the proprietor of a "trade mark" containing such arms to continue to use the trade mark is, however, preserved (*ib.* s. 90). And as to *royal warrants*, &c., see *ante*, p. 718.

PAWNBROKERS.

Meaning of
"pawn-
broker."

Everyone is deemed to be a *pawnbroker* who keeps a shop for the purchase or sale of goods or for the taking in goods *by way of security* for money advanced thereon, *and* who purchases or receives goods and pays or lends thereon any sum NOT EXCEEDING 10*l.*, on the understanding, whether express or implied, that such goods may be *afterwards redeemed or repurchased on any terms* (35 & 36 Vict. c. 93, s. 6).

Application
of Pawn-
brokers Act.

The Pawnbrokers Act *does not apply to loans over 10*l.**; and no person is to be deemed a pawnbroker by reason only of his lending, upon any terms, sums above 10*l.*

Liability for
act or
omission of
servant.

Anything done or omitted by the servant, apprentice, or agent of a pawnbroker in the course of business is to be deemed to have been done or omitted by the pawnbroker himself (*ib.* s. 8).

Search
warrant.

The owner of any linen, apparel, or unfinished goods, entrusted to anyone to wash, iron, manufacture, finish, or make up (which have been unlawfully obtained or taken from such owner, and which he has good reason to suspect have been taken in pawn), *or* the owner of any article unlawfully pawned, may, after oath taken, obtain from a justice a *search warrant* authorizing a search of the shop of the pawnbroker, using force, if necessary, but within the hours of business. If the

goods in question are found, they must, by summary ORDER, be restored forthwith to the owner. Anyone who hinders or obstructs such search is subject to a PENALTY of 10*l.* (*ib.* s. 36). Cf. OFFENCE (j), *post*, p. 757.

If a pawnbroker *reasonably suspects* that any article offered in pawn has been stolen or illegally obtained, he may detain the person offering it in pawn until he can deliver him to a constable to be conveyed before a justice; and, in the same way, he may detain the article offered. As to what are reasonable grounds for suspicion, cf. *Howard v. Clarke* (q). So, too, the pawnbroker may take the same course in case any person (a) offers to pawn an article, and refuses to give a satisfactory account of how he became possessed of it; or, (β) wilfully gives false information as to whether or not he is the owner of the article, or as to his own name and address, or as to the name and address of the owner; or, (γ) not having any colour of title to redeem a pledge, wrongfully attempts to redeem it (*ib.* s. 34).

When pawnbroker may apprehend customers.

The *justice* before whom the offender is brought may by certificate *order* that the pawnbroker be paid reasonable compensation for his trouble, loss of time, and any expenses that he may have incurred, and such order will have the same effect as an order for the costs of a prosecution (*ib.* s. 34).

Order for payment of expenses, &c., of pawnbroker.

Where any property has come into the possession of the police under this section (*i.e.*, s. 34), a court of summary jurisdiction may, on application either by a police officer or by a claimant of the property, make an order for delivery of the property to the person appearing to be the owner, or, if the owner cannot be ascertained, make such order as may seem meet (60 & 61 Vict. c. 30, s. 1; cf. *ante*, p. 196).

Order for delivery of property.

So, too, a pawnbroker may detain and hand over to a constable any person who produces to him a pawn-ticket which the pawnbroker reasonably suspects to have been forged or altered (35 & 36 Vict. c. 93, s. 49).

In any one of the *three* following cases, viz.:—

(a) Where a person is summarily convicted of *pawning* the property of another *without his authority*;

(β) Where a person is *convicted*, in any court, of

Order for delivery of pledge to owner with or without compensation to pawnbroker.

(q) (1888) 20 Q. B. D. 558; 58 L. T. 401; 52 J. P. 310.

Delivery of
pledge to
owner.

feloniously taking or fraudulently obtaining goods, and the goods have been pawned with a pawnbroker;

(j) Where it appears to a court of summary jurisdiction that any goods brought before the court have been unlawfully pawned with a pawnbroker;

the court, on proof of the ownership, may ORDER the delivery thereof to the owner, either on payment to the pawnbroker of the loan, or any part thereof, or without any such payment, as according to the conduct of the owner and the other circumstances of the case may seem just (*ib.* s. 30). Such an order, not made on the application of the owner, will not preclude the owner from suing the pawnbroker in detinue (*Leicester v. Cherryman*) (r).

It must not be forgotten that the Act will not apply if the loan exceeds 10*l.*; but in case the loan does exceed 10*l.*, and the goods have been stolen, see *ante*, pp. 193, 194.

As to cases within the metropolitan police district, see 2 & 3 Vict. c. 71, ss. 27, 28.

Damage to
pledge.

In the event of the pledge becoming of less value by reason of the default, neglect, or wilful misbehaviour of the pawnbroker, a justice may, on application, ORDER that reasonable compensation be made for such damage (35 & 36 Vict. c. 93, s. 28). As to accidental fires, see s. 27.

Appeal.

APPEAL against any conviction, order, or refusal of certificate under the Act lies to quarter sessions (*ib.* s. 52).

Loss of pawn-
ticket.

In case of the loss of a pawn-ticket, a form of declaration must be furnished by the pawnbroker to the person claiming to be entitled to the ticket, alleging that the ticket has been lost, mislaid, destroyed, &c.: and after this declaration has been made before a justice or commissioner, the declarant (not later than the third day after the form was furnished to him, exclusive of non-business days) will be able to redeem the property (*ib.* s. 29). It is an indictable misdemeanour knowingly to make a false declaration (*ib.*); but making a false declaration with reference to a pledge over 10*l.* in value is not within this section (*R. v. Tregoning*) (s).

(r) [1907] 2 K. B. 101; 76 L. J. K. B. 678; 96 L. T. 784; 71 J. P. 301.

(s) (1899) 63 J. P. 504.

Pawnbrokers are entitled to make the following charges in respect of loans :— Pawnbrokers' charges.

When a *loan does NOT EXCEED* 40s., $\frac{1}{2}d.$ per month on every 2s. or fraction of 2s. Half a month's charge if pledge redeemed within the first fourteen days of any month, except the first. When a *loan EXCEEDS* 40s., $\frac{1}{2}d.$ per month, or part of a month, upon every 2s. 6d. or fraction of 2s. 6d. Charge for pawn-ticket, $\frac{1}{2}d.$ if loan under 10s., 1d. if above. Upon loans between 40s. and 10l. the parties may, if they please, make their own bargain, to be specified in a special ticket (*ib.* s. 24).

All pledges are *redeemable within twelve months and seven days*. A pledge for 10s. or under, if not so redeemed, is absolutely forfeited. Pledges over 10s. must be sold by public auction; and the pawnbroker is bound at any time within three years to account, upon demand, for the surplus. The holder of the pawn-ticket is to be presumed to be the person entitled to redeem, and the pawnbroker is, under s. 25, indemnified (as against the pawner) in delivering up the pledge accordingly. But this section does not protect him against the claim of an owner, whose property has been pledged against his will, and who claims by title paramount to that of the pawner (*Singer Company v. Clarke*) (*t.*) Redemption of pledges.

Offences.

The following, amongst other OFFENCES defined by the Act, would appear to be triable before *one* justice, but as to the limits of the power of punishment possessed by a single justice, see *ante*, p. 12. The PENALTIES are recoverable by *distress*, and in default, imprisonment, *without* hard labour, according to scale (p. 111); and if the information (for an offence not relating to licences) is not prosecuted, or if the court thinks there was no sufficient ground for preferring the charge, the court may award a sum not exceeding 5l. to be paid by the informant to the defendant, which is recoverable as a penalty (*ib.* s. 47). Recovery of penalties.

APPEAL lies against a conviction to the quarter sessions (*ib.* s. 52). As to appropriation of penalties, see s. 46. Compensation to defendant.

(*t.*) (1880) 5 Ex. D. 37; 49 L. J. Ex. 224; 44 J. P. 59.

The court may award part of the penalty to the informant ; a moiety if he be the party aggrieved.

OFFENCES.

- (a) Acting as pawnbroker *without having a licence*, which will be granted by the excise, on the production annually of a certificate from the council of the district or county borough, see 56 & 57 Vict. c. 73, s. 27 (Excise PENALTY, 50*l.*—*ante*, p. 448) (35 & 36 Vict. c. 93, s. 37).

In the metropolis the certificate is granted by a police magistrate (cf. *R. v. Inland Revenue Commissioners*) (*u*). On an appeal to quarter sessions against the refusal of a certificate by the district council, it was held that the successful appellant could not be given costs, the council not appearing (*R. v. Northumberland JJ.*) (*x*).

- (b) Pawnbroker *not keeping proper books* or *not making entries* required by statute (10*l.*) (*ib.* s. 12 ; Sched. 3).

- (c) Pawnbroker *not exhibiting full name and description* “*pawnbroker*” *over the shop door*, and *table of rates in the shop* (10*l.*) (*ib.* s. 13).

- (d) Pawnbroker *refusing or neglecting*, unless with *reasonable excuse*, to *deliver a pledge to the holder of a pawn-ticket* if the latter pays the amount due and produces the ticket (10*l.*) (*ib.* ss. 25, 31). But, where a pawnbroker acting honestly has *lost the pledge*, he is not liable to conviction under these sections (*Allworthy v. Clayton*) (*y*).

- (e) Pawnbroker taking a pledge from a person appearing to be under *fourteen years of age*, or to be *intoxicated* ; or purchasing a pawn-ticket issued by another pawnbroker ; or keeping open on Sunday, Christmas Day, or Good Friday (10*l.*) (*ib.* s. 32 ; 8 Edw. 7, c. 67, s. 117).

Within the metropolitan police district, a pawnbroker may not take a pledge from a person under *sixteen* (2 & 3 Vict. c. 47, s. 50).

- (f) Pawnbroker *employing any person under the age of sixteen* to take pledges in pawn (10*l.*) (35 & 36 Vict. c. 93, s. 32).

(*u*) [1907] 1 K. B. 108 ; 71 J. P. 86.

(*x*) (1907) 96 L. T. 700 ; 71 J. P. 331.

(*y*) [1907] 2 K. B. 685 ; 76 L. J. K. B. 934 ; 96 L. T. 31 ; 71 J. P. 20 ; 21 Cox, 352.

- (g) Pawnbroker purchasing, or bargaining for, a pledge whilst in pawn with him, except in case of purchase by public auction (10*l.*) (*ib.* s. 32). Offences.
- (h) Pawnbroker making an agreement for the sale or disposition, *within the time of redemption*, of an article pawned or offered in pawn (10*l.*) (*ib.* s. 32).
- (i) Pawnbroker selling or disposing of pledge except as authorized by the Act (10*l.*) (*ib.* s. 32).
- (j) Pawnbroker knowingly taking in pawn any *linen, apparel, or unfinished goods, or material entrusted to any person to wash, iron, mend, finish, or make up*. [Forfeiture, for the use of the poor, of not exceeding *double* the amount of the loan, and restoration of the pledge] (*ib.* ss. 5, 35).
- (k) Pawnbroker failing to attend before a court of summary jurisdiction and produce his books and papers when ordered to do so (10*l.*) (*ib.* s. 50).
- (l) Any person (i.) offering to pawn an article and refusing to give a satisfactory account of how he became possessed of it; *or*, (ii.) wilfully giving false information as to whether or not he is the owner of the article offered in pawn, or as to his own name and address, or as to the name and address of the owner of the article; *or*, (iii.) attempting to redeem without having any colour of title to do so (10*l.*) (*ib.* s. 34).

It is also an OFFENCE for a pawnbroker to omit to give a pawn-ticket, or to take a pledge in pawn unless the pawner take the pawn-ticket, *or* for a pawnbroker to take or demand a sum beyond the charges authorized, *or* to refuse to give a receipt (*ib.* ss. 14, 15). These offences are not expressly made "offences against the Act," but the better opinion seems to be that the offender is subject to a PENALTY of 10*l.*, and that it is not necessary to have recourse to an indictment at common law.

Anyone who *knowingly and designedly pawns* anything which is *the property of another*, and which he is not employed or authorized by the owner to pawn, commits an offence (*ib.* s. 33). Unlawful pawning.

As to the difference between mere unlawful pawning and larceny, see *ante*, p. 653. The *pawnbroker* may prosecute for "unlawful pawning," although the accused

has already been convicted of stealing the goods in question, the doctrine of *res judicata* not being applicable (*Pickford v. Corsi*) (z).

Penalty for
unlawful
pawning.

PENALTY.—FINE, not exceeding 5*l.*, and a sum not exceeding the full value of the pledge as fixed by the court, recoverable by *distress*; and, in default, imprisonment, *without* hard labour, according to scale (p. 111).

The penalty when recovered is to be applied in compensating the injured party and in defraying the costs of the prosecution; and if the injured party refuses compensation, or if there is any surplus, the amount must be handed to the overseers of the poor.

We have already seen (*ante*, p. 753) that, on conviction, the court may, in certain cases, order delivery of the property to the owner, with or without compensation, as the circumstances may require.

PERJURY.

Meaning of
"perjury."

The misdemeanour known as "perjury" consists in wilfully, corruptly, and falsely swearing, in the course of a judicial proceeding, to some fact which is *material to the issue*. It is sufficient, says Mr. Justice Stephen, if the assertion is one which "the assertor does not believe to be true when he makes it, or on which he knows himself to be ignorant" (*Digest of Crim. Law*, 6th edit., p. 106). Unless, however, the proceeding be *judicial*, false swearing will not, in the absence of express provision, amount to perjury, even where the taking of the oath is exacted by Act of Parliament. This misdemeanour is punishable by penal servitude for seven years, and cannot, under any circumstances, be tried except at assizes, unless the accused be under sixteen years of age.

An offender is not, of course, excused by reason of his having affirmed in lieu of taking an oath, provided that he was a competent witness and the false affirmation was made before a legally competent court or authority; and the offence may be committed on the hearing of a charge made against an accused person, although such person

(z) [1901] 2 K. B. 212; 70 L. J. K. B. 710; 84 L. T. 627; 49 W. R. 537; 65 J. P. 628.

may have been brought before the court on an irregular warrant (*R. v. Hughes*) (a).

As to what amounts to a *judicial* proceeding, see *R. v. Tomlinson* (b), in which case it was held that a proceeding before a marine board, invested with statutory powers to suspend or cancel certificates, was judicial. So also is an arbitration before a county court judge to settle a question of compensation under the Workmen's Compensation Act, 1906 (*R. v. Crossley*) (bb).

What facts are *material to the issue* must depend on the particular circumstances of the case and the nature of the proceedings; but it may be remarked that the fact that a witness was of a certain *opinion* may be material, and that all statements made by him as to matters affecting his *credit* are material (*R. v. Baker*) (c). Indeed, where a witness was *improperly* admitted to give evidence in contradiction of certain statements made by another witness which only went to the credit of the latter, such evidence was, nevertheless, held to be "material" (*R. v. Gibbon*) (d).

The prosecution must show, with precision, the nature of the charge made, or of the issue involved, at the original hearing; and must prove all the facts necessary to found jurisdiction for the administration of the oath. Moreover, the commission of the offence must be proved by *two* witnesses, or by one witness corroborated by some independent documentary, strong circumstantial, or other evidence tending materially to corroborate his story. "There must be something in the corroboration which makes the fact sworn to (by the prisoner) not true — if that corroboration be true also" (*R. v. Boulter*) (e).

When witnesses are examined before an arbitrator under the Arbitration Act, 1889, or the Agricultural

"Judicial proceedings."

Materiality.

Mode of proof.

Arbitration Act, 1889, &c.

(a) (1879) 4 Q. B. D. 614; 48 L. J. M. C. 151; 40 L. T. 685; 43 J. P. 556; 14 Cox, 284.

(b) (1866) L. R. 1 C. C. R. 49; 36 L. J. M. C. 41; 15 L. T. 188.

(bb) [1909] 1 K. B. 411; 78 L. J. K. B. 299; 100 L. T. 463; 53 S. J. 214; 25 T. L. R. 225; 73 J. P. 119.

(c) [1895] 1 Q. B. 797; 64 L. J. M. C. 177; 72 L. T. 631; 43 W. R. 654.

(d) (1861) 31 L. J. M. C. 98; L. & C. 109; 5 L. T. 805; 10 W. R. 350.

(e) (1852) 2 Den. C. C. 396.

Affidavits.

Holdings Acts, or make oaths or affidavits before commissioners for oaths, they become liable to be prosecuted for perjury if they wilfully and corruptly give false evidence (52 & 53 Vict. c. 49, s. 22; 52 Vict. c. 10, s. 7; 8 Edw. 7, c. 28, s. 13 (v.)). As to officials furnishing "certified copies" which they know to be false, see 14 & 15 Vict. c. 99.

Justices may commit witness without an information.

Justices, in petty or special sessions, are empowered to direct a witness to be prosecuted for this misdemeanour, if it appears to them that such witness has been guilty of wilful perjury in any evidence given, or in any deposition or other proceedings, before them. They may commit the accused, in custody, for trial at the assizes, unless he enters into recognizances to appear and take his trial; and they may require any person whom they may think fit to prosecute or give evidence against him (14 & 15 Vict. c. 100, s. 19). But it is usual and advisable to initiate a prosecution by information in the ordinary way, and to take the depositions.

Subornation of perjury.

Subornation of perjury is the soliciting or procuring of a person to commit perjury, but it is necessary to complete the offence that the perjury should be actually committed, and this fact must be proved. The record of the conviction for perjury of the person suborned is not, it seems, in itself sufficient evidence that the perjury was committed ("Archbold," 23rd edit., p. 1070). The offence is triable only at assizes.

See OATHS, p. 748; CHILDREN, p. 380; WITNESSES, p. 952.

PERSONATION.

Personation.

It is a felony triable only at assizes falsely to personate any person, or the heir, executor, wife, widow, or relation of any person, with intent fraudulently to obtain land, money, or other property (37 & 38 Vict. c. 36, s. 1). See Stephen's "Digest of Criminal Law," 6th edit., p. 351.

As to personation of seamen in the navy, see 28 & 29 Vict. c. 124, s. 8. And see *post*, p. 884.

As to personation of soldiers, see the "Army Act," s. 142. And see *post*, p. 884.

As to personation at parliamentary and municipal elections, see Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 24,

and 6 & 7 Vict. c. 18, ss. 85—88; 46 & 47 Vict. c. 51, s. 6.

As to personation or fraud with a view to obtaining any annuity or allowance under the Elementary School Teachers' (Superannuation) Act, 1898, see 61 & 62 Vict. c. 57, s. 10.

In the metropolis it is an offence punishable summarily to personate a constable (2 & 3 Vict. c. 47, s. 17) : and see 10 & 11 Vict. c. 89, s. 12 (Town Police Clauses Act), where that section is in operation.

PETROLEUM.

The jurisdiction of justices to grant licences for the sale or storage of petroleum under the provisions of the Petroleum Act, 1871, s. 8, is now transferred to the district councils; and no person may, without a licence from such council, keep at any one time more than *three gallons* of petroleum, while, however small the quantity, it must be kept in separate glass, earthenware, or metal vessels, securely stopped, and not holding more than one pint apiece (34 & 35 Vict. c. 105, s. 7).

Licences to be granted by councils of districts or county boroughs.

The Act applies to any rock oil, Rangoon oil, Burmah oil, oil made from petroleum, coal, schist, shale, peat, or other bituminous substance, and any products of petroleum or any of the above-mentioned oils (*ib.* s. 3), which when tested gives off inflammable vapour at a temperature below 73° Fahrenheit when tried as prescribed by the Petroleum Act, 1879 (42 & 43 Vict. c. 47, Sch. 1). A composition containing 33 per cent. of petroleum is within the definition if it gives off inflammable vapour at such a temperature (*London C. C. v. Holzapfels, Ltd.*) (*f*).

Meaning of "petroleum."

The licences may be granted for a limited time, and subject to renewal or not, or to such conditions, &c., as the council thinks fit (34 & 35 Vict. c. 105, s. 9).

Every licensee violating the conditions of his licence is deemed an unlicensed person (*ib.* s. 9); and every unlicensed person occupying a place in which petroleum is kept in contravention of the Act commits an OFFENCE (*ib.* s. 7). The statute permits an aggregate amount of three gallons to be kept for private use or for sale; but it must be kept in securely stopped vessels, no one of which

Unlicensed persons, and persons violating conditions of licence.

(*f*) (1899) 68 L. J. Q. B. 886; 47 W. R. 622; 63 J. P. 615.

contains more than a pint (*ib.*). As to the keeping of petroleum for use on *light locomotives*, see *post*, p. 1203.

Penalty.

PENALTY.—FINE, not exceeding 20*l.* per day, and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111); and, in addition, forfeiture of the petroleum and the vessels containing it.

Omission to affix label.

It is an OFFENCE *against the Act* (a) to keep petroleum for more than seven days after it has been imported, or (b) to send it by land or water from one place to another in the United Kingdom, or (c) to sell or expose it for sale, *without putting a label* in conspicuous characters on the vessel containing it, stating its description and containing the words "Highly Inflammable," with the addition, (a) in the case of a *vessel kept*, of the name and address of the consignee or owner; (b) in the case of a *vessel sent or conveyed*, of the name and address of the sender, and (c) in the case of a *vessel sold or exposed for sale*, the name and address of the vendor (34 & 35 Vict. c. 105, s. 6).

Penalty.

PENALTY.—FINE, not exceeding 5*l.*, recoverable by distress and imprisonment as above; and, in addition, forfeiture of the petroleum and the vessel containing it.

Samples may be taken.

Search warrant.

Any duly appointed officer may require a dealer to sell him samples for the purpose of testing; and a *search warrant* may be granted by a court of summary jurisdiction if there is any reasonable ground to believe, upon information on oath, that the provisions of the Act are not being complied with. The petroleum and the vessels containing it may, if found, be seized and detained until it has been decided by a *court of summary jurisdiction* whether the same are *forfeited* or not (*ib.* s. 13).

Refusing samples, obstructing officer, or execution of warrant.

It is an OFFENCE for any *dealer* to refuse to show to such officer, on production of his authority, all the petroleum he has, or to *refuse samples*, or to *obstruct* the local authority or their officer; or for *any person*, by himself or by anyone in his employ or under his direction, to *refuse admittance* to anyone acting under such search warrant, or to *prevent search being made* or *samples taken* (*ib.* ss. 11, 12, 13).

Penalty.

PENALTY.—FINE, not exceeding 20*l.*, recoverable as above, and, in case of resistance to the execution of a search warrant, forfeiture of the petroleum.

Harbour authority to

It is the duty of every *harbour authority* to make BYE-LAWS (to be approved by the Board of Trade) for regulating

the places where ships carrying petroleum are to be moored and the mode in which it is to be landed ; and if any owner and master of such ship or the owner of its cargo refuses to comply with such bye-laws, he commits an OFFENCE (*ib.* s. 4).

make bye-laws.

PENALTY.—FINE, not exceeding 50*l.*, for every day of default, recoverable as above by distress and imprisonment.

Penalty.

Notice must be given to the *harbour authority* by the owner or master of any ship carrying petroleum, and, if this is not done, both owner and master commit an OFFENCE (*ib.* s. 5).

Notice by owner or master where petroleum on board ship.

PENALTY on each : FINE, not exceeding 500*l.*, unless the court is satisfied that neither the master nor the owner knew or could have ascertained the nature of the goods. But a court of *summary jurisdiction* cannot impose a penalty under this Act exceeding 50*l.* for any one offence (*ib.* s. 15).

Under the Locomotives on Highways Act, 1896, REGULATIONS as to the keeping or use of petroleum, &c., were made by a secretary of state on *July* 31st, 1907, and they will have effect notwithstanding anything in the Petroleum Acts (59 & 60 Vict. c. 36, s. 5). The PENALTY for breach of a regulation is 10*l.* ; see *post*, p. 1203.

Locomotives on Highways Act, 1896.
Appendix,
pp. 1203—
1207.

Hawking Petroleum.

Any person licensed to keep petroleum may *hawk* it either by himself or his servants, but care must be taken to comply with the provisions of the Petroleum (Hawkers) Act, 1881. A person hawking petroleum must, too, observe the enactments in force with respect to hawkers and pedlars, *ante*, p. 522 *et seq.* (44 & 45 Vict. c. 67, s. 1). If there is reason to believe that the regulations are being contravened, a constable or duly authorized officer may seize the petroleum, with the vessels and carriage containing it, and proceed as though there had been a seizure under s. 13 of the Act of 1871, *ante*, p. 762 (s. 4).

Person licensed to keep petroleum may "hawk."

It is necessary for the hawker to comply with the following REGULATIONS. He *must not by himself or his servants*—

Regulations.

1. Convey at one time, in any one carriage, more than twenty gallons ; and the carriage must be so constructed as to preclude the escape of liquid petroleum.

Petroleum—
contd.

2. Convey petroleum in a vessel which is not free from leakage.
3. Convey vessels containing petroleum in a carriage which is not properly ventilated and constructed.
4. Bring a fire or light, &c., dangerously near the carriage containing such vessels.
5. Allow petroleum to escape into a house or drain.
6. Store petroleum in other than licensed premises.
7. Omit to take due precautions for the prevention of accidents by fire or explosion, and of the access of unauthorized persons to the vessels.
8. Put explosive or any inflammable substance in the carriage whilst it is being used for hawking petroleum (*ib. s. 2*).

Penalty for
breach of
regulations.

PENALTY.—FINE, not exceeding 20*l.*, payable by the licensee, and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111); also forfeiture of the petroleum and of the carriage and vessels containing it.

Non-liability
for default of
servant.

A servant or other person actually committing the offence may be convicted; and the licensee escapes liability, if (on information laid) he can prove that the offence was in fact committed by the servant or other person, and that he has himself used due diligence to comply with the Act (*ib. s. 2*).

The provisions of this Act apply to *any* petroleum whilst in a carriage used for hawking petroleum to which the Act of 1871 applies, and are not limited to the kinds of petroleum mentioned by the earlier Act (*ante*, p. 761).

In boroughs.

It is within the power of any municipal borough to prohibit the hawking of petroleum within its limits.

As to *mixtures* of petroleum, see S. R. & O. 1907, No. 483; and as to *Carbide of Calcium*, see S. R. & O. 1907, No. 171, and 1904, No. 1659.

PISTOLS ACT, 1903

(3 Edw. 7, c. 18).

Meaning of
"pistol."

The term "pistol" means a firearm or other weapon of *any* description from which shot, bullet or other *missile* can be discharged, and of which the *length of barrel* (not including any revolving, detachable or magazine breech) does not exceed nine inches. But the Act does not apply

to the sale (*as a curiosity or ornament*) of an *antique pistol* with which no ammunition is sold, and which there is no reasonable ground for believing is capable of being effectually used (ss. 2, 8); nor to an “air pistol” if it be a mere toy (*Bryson v. Gamage, Ltd.*) (*f*₂).

It is made an OFFENCE—

- (i.) To sell a pistol by retail or by auction, or to let it on hire, to any person, unless, at the time of sale or hire, such person either
- (a) produces a current *gun licence* under the Gun Licence Act, 1870, or a current excise *certificate to kill game*; or
- (β) gives reasonable proof that he is *entitled to use* or carry a *gun without such licence* or certificate, by virtue of s. 7 of the Act of 1870, see *ante*, p. 516, [and produces a statement to that effect signed by himself and a police officer of his district (of not less rank than an inspector), or by himself and a justice of the peace]; or
- (γ) gives reasonable proof that, *being a householder*, he purposes to use the pistol only *in his own house* or the curtilage thereof, [and produces a statement to that effect signed by himself and a police officer of his district (of not less rank than an inspector), or by himself and a justice of the peace]; or
- (δ) gives reasonable proof that he is about to *go abroad for not less than six months*; and produces a statement to that effect signed by himself and a police officer of his district (of not less rank than an inspector), or by himself and a justice of the peace.

OFFENCES in relation to sale or hire of pistols.

The passages in square brackets are added to the sub-heads (β) and (γ) in accordance with the decision of a Divisional Court in *Matthews v. Gray* (*f*₃). “The section,” said *Darling, J.*, “is certainly very obscure . . . I read those last words (*i.e.*, the words in square brackets) as if they were inserted at the end of each of the sub-heads.”

(ii.) To fail (on such sale or letting on hire), *before*

(*f*₂) [1907] 2 K. B. 630; 76 L. J. K. B. 936; 97 L. T. 399; 71 J. P. 439.
 (*f*₃) [1909] 2 K. B. 89; 78 L. J. K. B. 545; 100 L. T. 907; 73 J. P. 303; 25 T. L. R. 476.

PISTOLS ACT,
1903—*contd.*

delivery, to make, or cause to be made, in a book kept for the purpose an entry specifying:—

- (a) the *description of the pistol*, whether single barrel, magazine, revolver, pin, rim or centre fire ; (β) the *date* of such sale or hire ; (γ) the *name and address* of the purchaser or hirer ; and (δ) the *office* from which the licence or certificate was issued, with the date, or the circumstances *exempting* the purchaser or hirer from having the licence or certificate.
- (iii.) To fail to *produce* the said book for inspection on the request of a police officer or officer of the Inland Revenue (*cf., as to officers of a county council, Order in Council, October 19th, 1908, par. x*).
- (iv.) Knowingly to make or cause to be made (on the sale, purchase, or hire of a pistol) any *false entry* or statement as to any of the matters of which entry is required.
- (v.) Knowingly to sell or deliver a pistol to any person *under the age of eighteen years*, who is not exempt (by s. 7 of the Act of 1870, *ante*, p. 516) from incurring a penalty for using or carrying a *gun* without licence or certificate (ss. 3, 4).

Penalty.

PENALTY.—FINE of not exceeding 5*l.*, recoverable by *distress*, and, in default, imprisonment *without* hard labour, according to scale (p. 111).

Purchase of
pistol by
person under
18.

Any person *under the age of eighteen years* (not so exempt as aforesaid) commits an OFFENCE if he buys, hires, uses or carries a pistol. The PENALTY is 2*l.* recoverable as above (s. 4).

Forfeiture of
pistol in
possession of
person under
18.

The Court may make such order as may seem fit in relation to the *forfeiture* or disposal of any pistol found in the possession of a person *under the age of eighteen years* and liable to a penalty under the Act (*ib.*).

Sale of pistols
to the drunk
or insane.

It is an OFFENCE knowingly to sell a pistol to any person who is *intoxicated* or is *not of sound mind* (s. 5).

PENALTY.—FINE not exceeding 25*l.*, recoverable as above, or IMPRISONMENT, with or without hard labour, for not more than THREE MONTHS.

POISONS.

No person, unless duly *registered* as a pharmaceutical chemist or chemist and druggist, may keep open a shop

for the *retail* sale of poisons, otherwise he becomes liable to penalties recoverable in the county court. There is, however, special provision enabling *unregistered* persons, if duly *licensed* by the local authority, to sell certain poisonous substances for *agricultural and horticultural* purposes (8 Edw. 7, c. 55, s. 2, and see the REGULATIONS of 2nd April, 1909 (S. R. and O., 1909, No. 345)).

The SCHEDULE to the Poisons and Pharmacy Act, 1908, specifies the articles to be deemed to be *poisons*. It is divided into two parts, and is subject to amendment.

Meaning of
"poisons."

PART I: *Arsenic* and its medicinal preparations; *aconite*, aconitine and their preparations; all *poisonous vegetable alkaloids* not specifically named, and their salts, and all their poisonous derivatives; *atropine*, and its salts, and their preparations; *belladonna*, and all preparations or admixtures (except belladonna plaisters) containing 0·1 or more per cent. of belladonna alkaloids; *cantharides* and its poisonous derivatives; any preparation or admixture of *coca* containing one or more per cent. of coca alkaloids; *corrosive sublimate*; *cyanide* of potassium, and all *poisonous cyanides* and their preparations; *emetic tartar*, and all preparations or admixtures containing one or more per cent. of emetic tartar; *ergot of rye*, and preparations of ergot; *nux vomica*, and all preparations or admixtures containing 0·2 or more per cent. of *strychnine*; *opium*, and all preparations or admixtures containing one or more per cent. of *morphine*; *picrotoxin*; *prussic acid*, and all preparations or admixtures containing 0·1 or more per cent. of prussic acid; *savin and its oil*, and all preparations or admixtures containing *savin* or its oil.

Part I.

PART II: Essential oil of *almonds* (unless deprived of prussic acid); *antimonial wine*; tincture and all vesicating liquid preparations or admixtures of *cantharides*; *carbolic acid*, and liquid preparations of carbolic acid, and its *homologues* containing more than 3 per cent. of those substances, except preparations for use as *sheep wash* or for any other purpose in connection with *agriculture or horticulture*, contained in a *closed vessel* distinctly labelled with the word "Poisonous," the name and address of the *seller*, and a *notice of the special purposes* for which the preparations are intended; *chloral hydrate*; *chloroform*, and all preparations or admixtures containing more than 20 per cent. thereof; any preparation or admixture

Part II.

Part II.—
contd.

of *coca* containing more than 0·1 per cent. but less than 1 per cent. of *coca* alkaloids; *digitalis*; *mercuric iodide*; *mercuric sulphocyanide*; *oxalic acid*; all preparations of *poppies*, except red poppy petals and syrup of red poppies (*papaver rheas*); *red precipitate* and all oxides of mercury; *white precipitate*; *strophanthus*; *sulphonal*; all preparations or admixtures which are not included in Part I. of this schedule, and contain a poison within the Acts, except preparations or admixtures the exclusion of which is indicated by the words relating to carbolic acid, chloroform, and *coca*, and except substances within s. 5 of the Act of 1908 (31 & 32 Vict. c. 121. s. 2; 8 Edw. 7. c. 55, s. 1). As to s. 5 of the Act of 1908, see *post*, p. 770.

Offences as to
sale of
poisons.

Anyone who SELLS poison, whether himself or by means of a servant or apprentice, commits an OFFENCE if

- (a) The box, bottle, or wrapper containing the poison is not labelled with the name of the article, the word “poison,” and the name and address of the seller.

If a man, in his own shop, sells the poison as agent for some other person on commission, it is not sufficient to place on the label the name and address of such other person (*Templeman v. Trafford*) (g).

- (b) He sells any of the poisons enumerated in, or added to, Part I. of the schedule above to a person who is unknown to him, unless such person be introduced by someone known to the seller or the sale be in course of wholesale dealing; or
- (c) He omits, on the sale of any of the poisons referred to in (b), to enter, before delivery, in the prescribed book the nature and quantity of the drug, the date of sale, and the purpose for which it is required, and to obtain the signature of the purchaser and of the introducer (if any) (31 & 32 Vict. c. 121, s. 17).

PENALTY. Fine not exceeding 5*l.*, and in default of distress, imprisonment, without hard labour, according to scale (p. 111). For a second offence the maximum penalty is 10*l.*

Exemptions.

The penal provisions do not apply to medicines administered to his patient by a qualified apothecary, nor to poisons contained in medicine dispensed by a

(g) (1882) 8 Q. B. D. 397; 51 L. J. M. C. 4; 45 L. T. 684; 46 J. P. 325; 30 W. R. 78.

registered chemist if the medicine be labelled and a record of the ingredients kept in manner provided by the Act (32 & 33 Vict. c. 117, s. 3). As to the meaning of "medicine," cf. *Berry v. Henderson* (*h*). But the penal sections are not confined to the sale of the scheduled poisons in their *simple* state or of the *preparations* of such poisons. They extend to the sale of a *mixture* or compound containing a scheduled poison, unless it be present in such an infinitesimal quantity as to bring the case within the maxim *De minimis non curat lex* (*Pharmaceutical Society v. Piper* (*i*); *Pharmaceutical Society v. Delve*) (*k*). M mixtures.

"Patent medicines" may be retailed by any one who procures a licence, but the exemption is restricted to medicines which are protected by letters patent under the Great Seal, and does not apply to proprietary medicines (cf. *Pharmaceutical Society v. Armson*) (*l*). As to sales by *wholesale* dealers, see 31 & 32 Vict. c. 121, s. 17. Patent medicines.

By resolution, in 1869, the Pharmaceutical Society added to the then existing list of poisons "every compound containing any poison within the meaning of the Pharmaceutical Act, 1868, when prepared or sold for the destruction of vermin." And, where a chemist had sold a vermin killer containing a dangerous quantity of poisonous vegetable alkaloids (which are included in Part I. of the schedule) without complying with the requirements referred to in (*b*) and (*c*), it was held that the resolution, by implication, placed vermin killers in Part II. of the schedule (as they were not specifically placed in Part I.), and that the chemist had committed no offence. It was contended, unsuccessfully, that the intention of the resolution was that vermin killers containing poisons within Part I. should fall within that part, while those containing poisons in Part II. should fall within Part II.: a view which had been adopted by the Departmental Committee appointed to consider the Vermin killers.

(*h*) (1870) L. R. 5 Q. B. 296; 39 L. J. M. C. 77; 22 L. T. 331; 34 J. P. 805.

(*i*) [1893] 1 Q. B. 686; 62 L. J. Q. B. 306; 57 J. P. 502.

(*k*) [1894] 1 Q. B. 71; 63 L. J. Q. B. 360; 70 L. T. 139; 42 W. R. 192; 58 J. P. 152.

(*l*) [1894] 2 Q. B. 720; 64 L. J. Q. B. 32; 71 L. T. 315; 59 J. P. 52.

Vermine
killers—
contd.

schedule in 1903 (*Brown v. Leggett*) (*m*). The schedule to the Poisons and Pharmacy Act, 1908, contains no reference to "vermin killers." It is presumed, therefore, that the Legislature no longer distinguishes between "vermin killers" and other poisonous substances.

Special
restrictions
on the sale of
certain
poisonous
substances.

Section 5 of the Act of 1908 imposes special restrictions on the sale of *sulphuric acid, nitric acid, hydrochloric acid*, soluble salts of *oxalic acid*, "and such other substances as may for the time being be prescribed by Order in Council." If any such substance be sold by retail, the box, bottle, vessel, wrapper, or cover in which it is contained must be distinctly labelled with the name of the substance, the word "*Poisonous*" and the name and address of the seller. The seller must also comply with any further regulations prescribed by Order in Council.

8 Edw. 7,
c. 55, s. 5.

Penalty.

PENALTY.—Fine of 5*l.*, recoverable by *distress*, and, in default, imprisonment *without* hard labour, according to scale (p. 111).

Selling
poisoned
grain, seed,
or meal.

Any one commits an OFFENCE who offers or exposes for sale, or *sells grain, seed, or meal*, which has been rendered *poisonous*, and calculated to destroy life (26 & 27 Vict. c. 113, s. 2).

Placing such
grain, seed, or
meal in any
ground or
exposed place.

And a like OFFENCE is committed by any one who *wilfully* sows, casts, or *places* such poisoned *grain, seed, or meal* into, in, or upon any *ground or other exposed place or situation* (*ib.* s. 3).

Exemptions.

The Act, however, permits the sale and use of poisonous ingredients for dressing, protecting, or preparing *grain or seed* intended for *bona fide* use in agriculture only, as well as the sale and sowing of grain or seed so prepared (s. 4). It will be seen, therefore, that a tradesman cannot sell poisoned meal for any purpose; nor poisoned grain, unless for a *bona fide* agricultural purpose, not, *e.g.*, for the purpose of killing rats in a cellar.

Informants and witnesses, who have participated in the commission of the offence, are discharged from any penalty if no proceedings were commenced against them before they laid information or gave evidence against the person charged (*ib.* s. 5).

(*m*) [1906] 1 K. B. 330; 75 L. J. K. B. 193; 94 L. T. 200; 70 J. P. 109.

PENALTY.—FINE, not exceeding 10*l.*, and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111). Penalty.

A portion, not exceeding one-half of the penalty, may be given to the informant if he is not a police officer (s. 5).

Any one commits an offence who wilfully sets or places, or causes to be set or placed, *in or upon any land* any *flesh or meat* which has been rendered *poisonous* and calculated to destroy life (27 & 28 Vict. c. 115, s. 2). Placing
poisoned flesh
or meat
upon land.

The occupier, however, of a dwelling-house or other building, and the owner of a rick or stack of any cultivated vegetable produce, may place poison in such dwelling-house, &c., *or in any enclosed garden attached to such house, or in the drains connected therewith (if fenced against dogs), or within such rick or stack, for the destruction of rats, mice, or other small vermin (ib. s. 3).* It has been held that the placing of poisoned meat in a pigeon-house, situate on the ground in an enclosed garden, for the purpose of killing cats is a placing “in or upon any land” within s. 2 (*Rogers v. Hull*) (n). And see *ante*, p. 256.

Informants and witnesses are protected as in the case of the offences dealt with *supra* (ib. s. 4).

PENALTY.—FINE, not exceeding 10*l.*, and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111). Penalty.

Half the penalty may be given to the informant if he is not a police officer (ib. s. 4).

As to administering poisons to *persons* with a criminal intent, see *ante*, p. 425. As to laying poison to kill *game*, see *ante*, p. 501. As to administering poisonous drugs to *animals*, see *ante*, p. 258. As to using poison to destroy *fish*, see *ante*, p. 479.

As to the sale of ARSENIC, see also 14 & 15 Vict. c. 13. Arsenic.

POLICE OF TOWNS.

The Town Police Clauses Act was originally designed as a set of standard police rules consolidated for incorporation with *special* Acts having reference to particular towns and districts, so as to secure some degree of uniformity. However, by the Public Health TOWN POLICE
CLAUSES ACT,
1847.
10 & 11 Vict.
c. 89.

(n) (1896) 60 J. P. 584 ; 12 T. L. R. 470.

Procedure.

Act, 1875, the principal provisions of the earlier Act (ss. 21—69) are made applicable to *all* URBAN districts, and they may also, with the consent of the Local Government Board, be applied to any RURAL districts throughout the country. When these provisions are in force AS PART OF THE PUBLIC HEALTH ACT, proceedings can be instituted only by some party aggrieved or by the local authority, unless with the consent of the Attorney-General; and the authority cannot delegate the power to prosecute except to an officer of their own. But it seems that, in respect of the numerous offences set forth in s. 28, the information may be laid by a police constable, although he be not an officer of the local authority, inasmuch as a specific direction is given to constables to *apprehend without warrant*, an offender *found committing* any of such offences (58 J. P. 483). When the charge is in respect of an offence under this section (*i.e.* s. 28) or under ss. 29, 31, the hearing may take place before *one* justice, but this is *not* so if the provisions of the section are in force as *part of the Public Health Act*; and, in any case, if the hearing is before a single justice, the amount ordered to be paid must not exceed 1*l.* (*ante*, p. 12).

Offences.

The following, amongst other OFFENCES, may be referred to, the PENALTIES being recoverable by *distress*, and, in default, imprisonment, *without* hard labour, according to scale (p. 111). APPEAL lies to quarter sessions (s. 73; 8 & 9 Vict. c. 20, s. 157).

Breach of orders as to processions, &c.

Wilful breach of orders made by the authority as to the route to be observed by carts, carriages, horses, and persons on public occasions, during public processions, &c., or regulating the driving of carts, &c., during services at churches or chapels on Sundays, &c. (2*l.*) (10 & 11 Vict. c. 89, ss. 21, 22).

STREET NUISANCES.
10 & 11 Vict.
c. 89, s. 28.

Committing, in *any* STREET, any of the following offences, to the *obstruction, annoyance, or danger of the residents or passengers*; for PENALTY, see p. 774:—

(a) Exposing for show, hire, or sale (except in a market, market-place, or fair) a horse or other animal; (b) exhibiting a show in a caravan or otherwise; (c) shoeing, bleeding, breaking, turning loose, &c., horses or other animals; (d) repairing a cart or carriage unless in case of emergency; (e) slaughtering or dressing cattle unless in case of emergency; (f) placing or leaving

on a footway wares, merchandise, casks, baskets, &c., or placing or using on any footway a standing-place, bench, stool, stall, or show-board; (g) placing a blind, or awning, or other projection, over a footway unless at least eight feet from the ground; (h) placing, or hanging up, or otherwise exposing for sale goods, wares or other matters, so that they project into or over a footway, or beyond the line of the house, shop, or building, so as to obstruct or incommode the passage of any one along such footway; (i) rolling or carrying a cask, hoop, or wheel, or a ladder, plank, or pole upon a footway except for loading or unloading a cart, or for crossing the footway; (j) placing a line or pole across a street, or hanging clothes thereon; (k) wantonly discharging a firearm, or throwing a stone or other missile, or making a bonfire, or throwing or setting fire to any firework; (l) wantonly disturbing any inhabitant by ringing a door-bell or knocking at a door; (m) wilfully and unlawfully extinguishing a lamp; (n) flying a kite, or making or using a slide upon ice or snow; (o) cleaning or scalding a cask; (p) sawing or cutting timber or stone, or screening lime, laying down stones, coals, bricks, &c. (except building materials, enclosed so as to prevent danger); (q) beating or shaking carpets or mats, except door-mats before 8 a.m.; (r) placing flower-pots, &c., in windows so as to be liable to be blown down; (s) throwing anything from a building, except snow thrown so as not to fall on passengers; (t) permitting person in one's service to stand on the sill of an upper window to clean or paint it; (u) leaving open a vault or cellar without sufficient fence or with a defective covering; (v) not fencing sufficiently, or not providing with a proper light after sunset, an area, pit, or sewer which is left open; (w) throwing or laying litter, ashes, offal, or rubbish on a street (except sand, &c., in time of frost, or litter to prevent water in pipes from freezing, or in case of sickness to prevent noise, if removed when the necessity ceases); (x) causing offensive matter to run from a manufactory, brewery, slaughter-house, &c., into a street; (y) keeping a pig-stye not sufficiently shut out from the street; and (z) keeping swine in or near a street so as to be a common nuisance (*ib.* s. 28).

STREET
NUISANCES—
contd.

As to foot-
ways.

Discharging
firearms,
throwing
fireworks,
ringing door-
bells &c.

Making or
using a slide,
&c.

Shaking
carpets, &c.

Leaving
cellars, &c.,
unprotected.

Casting
rubbish into
street.

Meaning of
"street."

The word "street" extends to and includes any road, square, court, alley, and thoroughfare, or any public passage (*ib.* s. 3), and see the Public Health Act, 1875, s. 4. It would not, however, seem to extend to or include a place from which the owner has an absolute right to exclude the public, although it may be metalled and adjoining the highway (*Curtis v. Embery* (o); *sed cf. Marks v. Ford* (p)). And where certain embayments had been cleaned and repaired, from time to time, by the highway authority, the erection of buildings upon them was held not to amount to an obstruction of the street, the facts being consistent with absence of intention to dedicate (*Piggott v. Goldstraw*) (q).

Public Health
Act, 1907,
s. 81.

In districts to which Part VII. of the *Public Health Act*, 1907, has been APPLIED, places of *public resort* or recreation grounds under the control of the authority, and *unfenced ground* abutting upon any street in an urban district, are to be deemed "streets" for the purpose of s. 29 of the Town Police Clauses Act (*infra*), and also in respect of offences (k) and (w), *supra*, and of certain other offences specified in s. 28 which are dealt with under the titles: DOGS (p. 415), DRIVING (p. 422), and INDECENCY (p. 567).

It will be observed that the residents or passengers must be obstructed, annoyed, or exposed to danger in order that an offence may be constituted; but it seems to be sufficient if any *one* resident or inhabitant has been so obstructed, annoyed, or exposed to danger (*Innes v. Newman*) (r).

Penalty.

PENALTY.—FINE, not exceeding 2*l.*, and, in default of distress, imprisonment, *without* hard labour, according to scale (p. 111); or,

IMPRISONMENT, *without* hard labour for not more than FOURTEEN DAYS. Cf. *ante*, p. lxxxiii.

Drunk and
riotous.

Any person who is (i.) *drunk* in a street and is guilty of *riotous or indecent* behaviour; or, (ii.) guilty of *violent or indecent* behaviour in a *police office* or station house, commits an offence (10 & 11 Vict. c. 89, s. 29; and see *ante*, p. 606).

PENALTY.—FINE, not exceeding 2*l.*, and, in default of

(o) (1873) L. R. 7 Ex. 369; 42 L. J. M. C. 39.

(p) (1881) 45 J. P. 157.

(q) (1901) 84 L. T. 94; 65 J. P. 259; 19 Cox, 621.

(r) Cited *ante*, p. 567.

distress, imprisonment, *without* hard labour, according to scale (p. 111); *or*,

IMPRISONMENT, *without* hard labour, for not more than SEVEN DAYS. Cf. *ante*, p. lxvii.

In addition to or in substitution for any other penalty, the court may order the defendant to *enter into a recognisance*, with or without sureties, *to be of good behaviour* (2 Edw. 7, c. 28, s. 3; and cf. *post*, p. 898). As to the Inebriates Acts, see *ante*, p. 608.

Every person who *wilfully* sets fire to a chimney, or causes it to be set on fire, is liable to a PENALTY of 5*l.* The occupier of premises in which a chimney *accidentally* takes fire is liable to a PENALTY of 10*s.*, unless he can show that such fire was not owing to the neglect or carelessness of himself or his servant. The penalties are recoverable by distress as above (10 & 11 Vict. c. 89, ss. 30, 31).

Chimneys on fire.

Every person, keeping a place of *public resort for the sale or consumption of refreshments* of any kind, who knowingly suffers *common prostitutes or reputed thieves to assemble* and continue therein is liable to a PENALTY of 5*l.*, recoverable by distress as above (*ib.* s. 35). This would extend to licensed houses; but as to them, see also *ante*, pp. 630, 632.

Harbouring prostitutes or thieves in public refreshment-houses.

There is also a provision as to licensed persons harbouring constables on duty (*ib.* s. 34); but, as to such cases, see *ante*, p. 633.

Every person who keeps, or uses, or acts in the management of, any house, room, pit, or place for the purpose of fighting, baiting, or worrying animals is liable to a PENALTY of 5*l.*, recoverable by distress as above; *or*, if the court thinks fit, the offender may be *imprisoned*, with hard labour, for a term not exceeding ONE MONTH. And any person found present at such a place, without lawful excuse, is liable to a PENALTY of 5*s.* (*ib.* s. 36). See, too, *ante*, p. 251.

Keeping places for baiting animals.

See also as to CATTLE IN STREETS, *ante*, p. 361; as to DOGS, *ante*, pp. 414, 415; as to DRIVING AND RIDING, *ante*, p. 422; as to HACKNEY CARRIAGES, *ante*, p. 517; as to PROSTITUTES AND INDECENCY, *ante*, pp. 567, 568; as to HAWKING GUNPOWDER, *ante*, p. 453; and as to FIREWORKS, *ante*, p. 453.

POOR.

Poor Rates.

Appointment
of overseers.

In *rural* parishes overseers and assistant overseers are now appointed by the parish councils, or, if there is no parish council, then by the parish meeting (56 & 57 Vict. c. 73, ss. 5, 19). In *urban* districts the Local Government Board may, on the application of the council, confer a similar power of appointment on the council or some other representative body; but, unless and until such power is conferred, the appointment still rests with the justices of the petty sessional division in which the parish is situate (*ib.* s. 33). Either county or borough justices may appoint for a parish comprised in a borough where there is no court of quarter sessions (*ante*, p. 5). The selection of overseers by justices is made annually at a *special* session held for that purpose on March 25th, or within fourteen days thereafter (*ante*, p. 15), and is usually, but not necessarily, made from a list approved by the inhabitants in vestry. Substantial householders, generally two in number, are appointed; but the justices need not necessarily appoint a householder in the parish if the inhabitants in vestry request the appointment of a neighbouring householder living within certain prescribed limits, who must, however, be a willing nominee and be assessed to the poor rate of the parish (59 Geo. 3, c. 12, s. 6).

Assistant overseers are appointed in *urban* districts by two justices in *petty* sessions, on the nomination of the inhabitants in vestry, unless the power of appointment has been conferred on the district council (*ib.* s. 7).

Making of a
poor rate.

A poor rate is made by the majority of the churchwardens and overseers on the net annual value of the property liable to be rated, in accordance with the existing valuation list (25 & 26 Vict. c. 103, s. 28). In *rural* parishes the churchwardens have, however, no longer any power except so far as relates to affairs of the church (56 & 57 Vict. c. 73, s. 5). The rate must be *allowed* by the signature of two justices on production of a copy of the valuation list; but their assent is ministerial merely (*ante*, p. 22), and cannot be refused if the rate be good upon the face of it, and appears to be laid by the proper

Allowance by
justices.

persons, not even if the justices consider the rate an unjust one. The justices may, it is presumed, sign separately. After this the rate is deemed to be made, but it must be *published* in manner required by the statutes on the next Sunday after the allowance, by affixing a notice, before the commencement of service, on or near to the principal doors of the churches within the parish; or, if there be no church, then the notice must be affixed, within fourteen days, in some open and conspicuous place (17 Geo. 2, c. 3, s. 1; 7 Will. 4 & 1 Vict. c. 45, s. 2; 45 & 46 Vict. c. 20, s. 4).

Publication.

The occupier, and not the owner, is, speaking generally, the person responsible for the payment of the rate; but, in the case of certain small holdings provided for by statute, *owners* may be rated under an agreement in writing or (if the holding includes a dwelling-house) by *order* of the parish council, and, in that event, the Act authorises an abatement from the amount of rate. The word "owner" in this statute includes an *agent* who receives the rent (32 & 33 Vict. c. 41, ss. 3, 4, 20). Moreover, in a parliamentary borough, the owner of any house *wholly let out in apartments*, whatever its value, is to be rated instead of the occupiers (30 & 31 Vict. c. 102, s. 7). But, under the last cited statute of 1867, the owner is not entitled to the abatement allowed under the later Act of 1869 (*White v. Islington Corporation*) (rr); and under the Act of 1867, an *agent* employed to collect rents is not to be treated as the owner (*Nokes v. Strong*) (r₃). An outgoing occupier is only liable in respect of such proportionate part of the rate as may have accrued during his occupancy (45 & 46 Vict. c. 20, s. 3).

Liability of
"owner."

If the person rated neglect for *seven days* after demand to pay the rate, payment may be enforced upon summons before two justices at petty sessions. The summons, which may be issued by one justice, must be directed to the party rated, and may be served either personally or with some person at his last place of abode, or, if the place of abode is unknown, it may be left upon the premises rated. If the party does not appear, the justices, on proof of service of the summons, may proceed *ex parte*.

Recovery of
poor rates.

(rr) [1909] 1 K. B. 133; 78 L. J. K. B. 168; 100 L. T. 22; 73 J. P. 44; 7 L. G. R. 133; 25 T. L. R. 121.

(r₃) [1909] 2 K. B. 625; 78 L. J. K. B. 1041; 101 L. T. 318; 73 J. P. 417.

Recovery of
rates—*contd.*

On proof that the rate has been duly made, allowed, published, and demanded, that the party summoned was rated as occupier, and that he neglected for seven days after demand to pay the rate, the justices will issue a *warrant of distress* to recover the amount with costs; and it is provided that the production of the rate-book, with the allowance by justices, is *prima facie* evidence of the making and publication of a rate which appears to be made in the form prescribed by law (54 Geo. 3, c. 170, s. 12; 32 & 33 Vict. c. 41, s. 18). A personal demand is not necessary if the demand note has been left at the address of the ratepayer (General Order, June 14th, 1875).

The warrant may be directed against *one* of several *joint* occupiers for neglecting to pay a rate assessed on all of them. And, where the rate is good on the face of it and there has been no appeal against the assessment, the warrant must issue against a rated occupier although he may, in fact, be in occupation of *part* only of the premises. One warrant may issue against several persons.

As to the nature of the demand when the occupier or owner does not live in the parish, or the residence of the person assessed cannot be ascertained, see 31 & 32 Vict. c. 122. The demand note may be delivered to the person in custody of the premises, or, if there be no such person, it may be affixed on some conspicuous part of the premises (*ib.* s. 39); and as to demand on a corporation, see *ib.* s. 40.

Tenancies
not exceeding
three months.

The occupier of a hereditament "let to him for a term not exceeding *three months*" may deduct a rate paid by him from his rent and cannot be compelled to pay at one time or within four weeks a greater amount than would be due for one quarter (32 & 33 Vict. c. 41, ss. 1, 2); while a weekly tenant subject, by local custom, to a week's notice to quit is such an occupier (*Hammond v. Farrow*) (s).

Meaning of
"occupation."

"Occupation" is constituted by legal possession coupled with permanent (as distinguished from mere temporary) user of the premises. It is, indeed, a question of fact which may involve a question of intention. If a house is kept furnished and ready for occupation by

(s) [1904] 2 K. B. 332; 73 L. J. K. B. 726; 68 J. P. 352; 91 L. T. 77; 2 L. G. R. 817; 20 T. L. R. 497.

the owner or any person to whom he might let it, that is clearly an "occupation" of the premises although no one may be living in the house (cf. *Smith v. Dauney* (t)); and the mere removal of the furniture from the premises during a part of the year will not exempt from liability to rates during such period if there be an *animus reverendi* (*Gage v. Wren*) (tt). So, again, a warehouse or building may be treated as "occupied" if it be kept as a "spare room," or as a "stand by" for use at any moment when the exigencies of business may require it—even though the shafting, machinery, or appliances may have been affixed to the freehold (*R. v. Melladew* (u); *Borwick v. Southwark Corporation* (uu)).

The warrant, however, will not issue if the party summoned can urge with truth that the rate does not show on its face the purpose for which, or by what authority, it was made; or that the rate was not duly published; or that it appears on the face of it to be made for an illegal purpose; or that he had given notice of appeal; or that there had been no demand and refusal; or that the property rated is not in the parish; or that he was not, in fact, the occupier of the land, *e.g.*, on the ground that he lived on the premises merely as caretaker for the real occupier (*R. v. Simmonds* (v); *Overseers of Bursledon v. Clarke*) (x). Where, however, after demand of the rate, and during the period covered by it, the occupier went out of possession of part of the premises, it was held that justices were entitled to apportion the rate and issue a distress warrant for the reduced amount although no fresh demand had been made, *i.e.*, although the amount then actually due had never been demanded (*Mansel v. Itchen Overseers*) (y). But *matters of appeal* against the making of the rate (unless they be matters which demonstrate

When
warrant may
not issue.

(t) [1904] 2 K. B. 186; 73 L. J. K. B. 646; 90 L. T. 760; 20 T. L. R. 444.

(tt) (1902) 87 L. T. 271.

(u) [1907] 1 K. B. 192; 76 L. J. K. B. 262; 96 L. T. 189; 5 L. G. R. 177; 71 J. P. 125; 23 T. L. R. 207.

(uu) [1909] 1 K. B. 78; 78 L. J. K. B. 121; 99 L. T. 841; 7 L. G. R. 10; 73 J. P. 38.

(v) (1893) 62 L. J. M. C. 106; 57 J. P. 324.

(x) (1897) 61 J. P. 261.

(y) [1906] 1 K. B. 221; 75 L. J. K. B. 232; 94 L. T. 320; 54 W. R. 456; 70 J. P. 148.

When warrant may not issue—*contd.*

that the rate cannot affect or apply to the person against whom the warrant is to issue), as, *e.g.*, the unfairness of the assessment, or the fact that the occupation was not beneficial to the occupier, or the improper objects of the rate, *cannot* be urged at this stage (*R. v. Kingston* (z); *R. v. Sinclair* (a)); nor can liability be contested on the ground that the property is exempt from rateability as being, *e.g.*, a scientific institution not carried on for gain (*Churchwardens of Birmingham v. Shaw*) (aa); nor can the justices inquire whether the rate was partly retrospective and covered expenses incurred during a period before the date of the ratepayer's occupation (*Cheney v. Tallowin*) (b). Indeed, if the rating authority had *jurisdiction to make the rate*, it may be stated generally that objections to the rate, not apparent on the face of it, cannot be raised on the application for a distress warrant (*Westminster v. Army and Navy, &c.*) (c). But, where a ratepayer, after receipt of the demand note, gave notice of objection to the assessment committee, who thereupon *raised* the assessment, amended the valuation list and gave notice to the overseers, it was held that the magistrate might treat as a nullity the amended rate. The ratepayer had paid the amount claimed on the *original* demand note, but refused to pay the balance as shown to be due by an *amended* demand note (*Hudson v. Rhodes*) (c₂). Where (as under the Public Health Act, *post*, p. 805) a local Act directed a warrant to issue unless "sufficient cause" were shown, a majority of the court held that a warrant ought not to issue if, for the purpose of the hearing, admissions were made before the justices from which it appeared that land entitled to a deduction of three-fourths had been assessed at the full value. But *Bigham, J.*, expressly dissented, pointing out the importance of strictly defining the duties of magistrates, and added:

(z) (1858) 27 L. J. M. C. 199; 23 J. P. 4; E. B. & E. 256.

(a) (1896) 60 J. P. 551.

(aa) (1849) 10 Q. B. 868.

(b) [1904] 2 K. B. 763; 73 L. J. K. B. 943; 91 L. T. 552; 2 L. G. R. 1338; 68 J. P. 528.

(c) [1902] 2 K. B. 125; 71 L. J. K. B. 546; 87 L. T. 78; 50 W. R. 631; 66 J. P. 727.

(c₂) [1909] 1 K. B. 85; 78 L. J. K. B. 128; 99 L. T. 967; 7 L. G. R. 159; 73 J. P. 66.

“Admissions merely take the place of evidence; they give no jurisdiction if none exists” (*Dixon v. Blackpool and Fleetwood Tramroad Co.*) (*c*₃). Where a ratepayer tenders to the overseers in court a part of the rate but declines on conscientious grounds to pay the balance, justices are not bound to issue a distress warrant for more than the balance (*R. v. Gillespie*) (*d*); but it seems that, if they choose to take such a course, they will not be restrained by the King’s Bench (*Ex parte Wiles*) (*e*).

No formal “order” for payment is necessary, the rate itself being the order (*R. v. Price*) (*f*); and it would seem that the Summary Jurisdiction Acts do not apply, so that a warrant of distress may be at once issued for realizing the amount with costs, and the claim need not be treated as one for a “civil debt” (see, too, s. 10 of the Summary Jurisdiction Act, 1884, *post*, p. 1065; but cf. s. 47 of the Summary Jurisdiction Act, 1879, *post*, p. 1051).

The Distress for Rates Act, 1849, authorises the levy of “reasonable” charges for taking and selling the distress: but this does not authorise the levy of charges which exceed the limit imposed by the Distress (Costs) Act, 1817, as applied to poor rate by the Distress (Costs) Act, 1827 (*Coster v. Headland*) (*g*). Certain small charges for “possession” under the Police Act, 1890, may be recovered, even whilst the goods are “stored” in a police station (*Scott v. Denton*) (*h*). Justices have a discretion as to including in the amount directed to be enforced by warrant a reasonable sum for costs incurred by the overseers “in obtaining the same,” *i.e.*, the steps taken to obtain the justices’ order for payment of the rate (*R. v. Baker, Ex parte Guildford Overseers*) (*hh*). In default of distress, two justices of the jurisdiction to whom the warrant is returned *nulla*

The amount is not a “civil debt.”

Charges for execution of warrant.

Commitment in default of distress.

(*c*₃) [1909] 1 K. B. 860; 78 L. J. K. B. 637; 100 L. T. 403; 7 L. G. R. 390; 25 T. L. R. 323; 73 J. P. 219.

(*d*) [1904] 1 K. B. 174; 73 L. J. K. B. 106; 90 L. T. 15; 68 J. P. 11; 52 W. R. 367; 2 L. G. R. 59; 20 T. L. R. 113.

(*e*) (1904) 73 L. J. K. B. 112, n.; 90 L. T. 225; 68 J. P. 13; 20 T. L. R. 150.

(*f*) *Ante*, p. 526.

(*g*) [1906] A. C. 286; 75 L. J. K. B. 483; 94 L. T. 589; 70 J. P. 249.

(*h*) [1907] 1 K. B. 456; 76 L. J. K. B. 330; 71 J. P. 66.

(*hh*) (1909) 100 L. T. 522; 7 L. G. R. 422; 73 J. P. 166.

Poor rates—
contd.

bona, or “no sufficient distress,” may commit the person liable to prison for a term not exceeding three months, unless the sum due, including the cost of conveyance to prison, be sooner paid (12 Vict. c. 14, ss. 2, 3). A married woman with separate estate may be committed on such a return (*Re Allen*) (*i*).

After indorsement of the warrant, goods of the person assessed may be levied outside the jurisdiction of the justices by whom it was issued (17 Geo. 2, c. 38, s. 7; 54 Geo. 3, c. 170, s. 12); but there appears to be no provision authorizing the “backing” of the warrant of commitment.

The justices act ministerially and cannot withhold the distress warrant (so as to give time for payment) by directing that its execution be delayed: they are bound to deliver it to the overseers (*R. v. Burnley JJ.*) (*j*). But justices in petty sessions, on the application of a person rated, may (if the parish officers consent) excuse payment of a poor rate on proof of inability to pay (54 Geo. 3, c. 170, s. 11). As to the payment of rates in case of bankruptcy, or of the liquidation of a company, see 51 & 52 Vict. c. 62, and 8 Edw. 7, c. 69, s. 209.

Appeal.

APPEAL to Quarter Sessions does not lie against the issue of a distress warrant, unless and until it has been followed up by a levy (*R. v. London JJ., Ex parte Bayne*) (*k*).

Appeal to
special
sessions
against rate.

Four special sessions (at the least) are held in each year, in every petty sessional division, for the purpose of hearing *appeals* against the poor rate of the several parishes comprised therein (*ante*, p. 15). Justices at these sessions, or an adjournment thereof, may hear and determine all objections to the rate on the ground of inequality, unfairness, or incorrectness in the valuation of the hereditaments rated. They cannot, however, entertain any question as to the liability of the hereditaments to be rated, but only as to the true value thereof, and as to the fairness of the amount at which they have in fact been rated (6 & 7 Will. 4, c. 96, s. 6). Written notice of the nature of the objections must be

(*i*) [1894] 2 Q. B. 924; 63 L. J. M. C. 269; 10 R. 514; 43 W. R. 141.

(*j*) (1880) 7 Q. B. D. 398.

(*k*) [1899] 1 Q. B. 532; 68 L. J. Q. B. 383; 80 L. T. 286; 47 W. R. 316; 63 J. P. 388.

given (seven days at least before the special sessions) to the persons by whom the rate was made; and, in a rural parish having a parish council, notice of appeal must be given to the parish council (*R. v. Tewkesbury*) (l). As to the necessity for an application for relief to the assessment committee before any such appeal can be heard, see 27 & 28 Vict. c. 39, s. 1.

The justices have the powers of amending and quashing the rate, and of awarding costs, which courts of quarter sessions have upon appeal against a poor rate (6 & 7 Will. 4, c. 96, s. 7); and, in general, where errors affect only the individual ratings, the rate should be amended, but, if they affect the principle or proportion of the rate, as if a given description of property is not rated at all, the rate should be quashed, for the burden of proving the extent to which each party should be rated ought not to be cast on the appellant.

Power to amend or quash the rate.

Appeal lies from the special sessions to quarter sessions (*ib.* s. 6).

A justice is not disqualified from acting at *special* sessions in the determination of a rating appeal by reason of the fact that he is a ratepayer in the parish in which the rate appealed against was made (*Ex parte Workington Overseers*) (m). See 16 Geo. 2, c. 18, s. 1, and *ante*, p. 19.

As to the recovery of the *contributions* due from *overseers* to the guardians of the union, see 2 & 3 Vict. c. 84, s. 1.

And as to the recovery of sums certified by a *district auditor* to be due under the Acts relating to the Poor, see *post*, p. 1065, and, as to limitation of time, 12 & 13 Vict. c. 103, s. 9.

Power of Justices to Order Relief.

In a case of *emergency* a justice may *order the overseers* to give temporary relief in articles of absolute necessity, but not in money, to any *poor person not settled, nor usually residing, in their parish*. So, too, he may *order*, in case of sudden and dangerous illness, that *medical*

Justice's order for temporary relief in case of emergency.

(l) [1903] 1 K. B. 39; 72 L. J. K. B. 41; 87 L. T. 583; 51 W. R. 285; 67 J. P. 54.

(m) [1894] 1 Q. B. 416; 70 L. T. 143; 58 J. P. 381.

relief be given to any *person whatsoever*, whether a parishioner or not (4 & 5 Will. 4, c. 76, s. 54).

In case such order is disobeyed, an overseer is liable, on conviction before two justices, to a penalty of 5*l.*, recoverable by distress, and, in default, imprisonment, without hard labour, according to scale (p. 111).

Justices' order
for relief of
adult unable
to work.

Where an adult person, entitled to receive relief in any union, is from *old age or bodily infirmity wholly unable to work*, two justices for the district wherein the union is situate may order that such person be afforded relief without being required to reside in a workhouse. One of the justices must, however, certify in the order, of his own knowledge, that such person is unable to work; and the order cannot be made without first summoning the parties to be affected by it to show cause (*R. v. Totnes Union*) (*n*). Disobedience of this order is punishable by fine of 5*l.*, recoverable as above (*ib.* ss. 27, 95).

Justice's order
for relief of
discharged
prisoner.

By the Released Prisoners (Poor Law Relief) Act, 1907, a justice, having jurisdiction in the place where a prison, industrial or reformatory school, or inebriate reformatory is situate (or being a member of the visiting board of the prison, &c.), may make an order for the removal to a workhouse of a prisoner or person detained, who is about to be released and is likely to require immediate relief. Such order may be made on receipt of a written notice given by the governor or superintendent that the contingency contemplated is likely to arise. The removal will be to the place of settlement, or, if that cannot be ascertained, to the union to which the prisoner is to be deemed to be *prima facie* chargeable as explained in the statute (7 Edw. 7, c. 14).

As to *lunatic paupers*, see *ante*, p. 679.

Maintenance of Family and Relations.

Maintenance
of pauper
relatives
unable to
work.

"The *father and grandfather, and the mother and grandmother, and the children, of every poor, old, blind, lame, and impotent person, or other poor person not able to work* (and chargeable to the parish, &c.), *being of sufficient ability*, shall relieve and maintain every such poor person" (43 Eliz. c. 2, s. 7).

(*n*) (1845) 7 Q. B. 690; 14 L J M C. 148

In the amending statute (59 Geo. 3, c. 12, s. 26) the collocation of words is "poor, old, blind, lame, impotent, or other poor person not able to work;" but it seems clear that it is not sufficient that the person relieved should be destitute; he must be *unable* to work (cf. *R. v. Gulley*) (o).

Where a father, in order to avoid his obligation under the statutes, had conveyed all his property to his second wife by way of post-nuptial settlement, it was held that justices might yet find him to be of "sufficient ability" to maintain his son (*Coulson v. Davidson*) (p).

If the relation is a *lunatic*, the liability to maintain is not taken away by the provisions as to maintenance contained in the Lunacy Act (53 Vict. c. 5, s. 296). Nor would the fact that an order had been made on a *husband* for the maintenance of a *lunatic* wife under the Poor Law Amendment Act, 1850 (13 & 14 Vict. c. 101, s. 5, *ante*, p. 562), preclude the making of an order on a *son* of the lunatic under this statute of Elizabeth (*Cole v. Brown*) (q).

The application to enforce this obligation is made upon summons by the overseers when the person is chargeable to a parish, and by the guardians in case of a union; and the justices may make an *order* with costs, the amount directed to be paid for relief being recoverable as a "civil debt" (*ante*, p. 118; *In re Gamble*) (r).

Order by justices.

It is, of course, not necessary that the proceedings should be taken within six months of the relative becoming chargeable, inasmuch as the liability is continuing; though any arrears recoverable under the order will be limited to those accrued within six months of the complaint. But as to *lunatics*, cf. 11 & 12 Vict. c. 43, s. 35.

Limitation of time.

These Acts extend to lawful blood relations only, and *not to reputed parents or bastards*. Thus, a man who marries a woman having a child or children, whether legitimate or illegitimate, is liable to maintain them *as part of his family*, until such child or children respectively

P. 1016.

No order as to bastards.

(o) (1715) Foley's "Poor Laws," p. 61.

(p) (1907) 96 L. T. 20; 5 L. G. R. 56; 71 J. P. 17,

(q) [1907] 2 K. B. 301; 76 L. J. K. B. 847; 96 L. T. 710; 71 J. P. 335; 5 L. G. R. 727.

(r) [1899] 1 Q. B. 305; 68 L. J. Q. B. 195; 79 L. T. 642; 63 J. P. 101.

attain the age of sixteen, *or* until the death of the mother (4 & 5 Will. 4, c. 76, s. 57), and a woman is punishable *as a vagrant* for neglecting to maintain her bastard child (see VAGRANTS, *post*, pp. 922, 926); but an order for maintenance cannot be made under the statute of Elizabeth in respect of any bastard child.

Who are
relatives
within the
statutes.

Liability of
relatives.

It will be observed that grandchildren *cannot* be compelled to support their grandparents (*Maund v. Mason*) (*s*), but the grandparent would be liable to relieve the grandchild notwithstanding the fact that the father was still alive (*R. v. Joyce*) (*t*). Prior to 1882 a married woman *during coverture* could not be compelled to support her grandchildren (*Coleman v. Overseers of Birmingham*) (*u*); but a married woman, with separate estate, is now liable to maintain her husband, children, and grandchildren (45 & 46 Vict. c. 75, ss. 20, 21). It was held, however, that no order could be made upon her in respect of the maintenance of her *father or mother*, the liability being limited by statute to children and grandchildren (*Pontypool Union v. Buck*) (*x*). But the liability of a married woman "having separate property" in respect of the maintenance of her parent or parents is now the same as that of a *feme sole* (8 Edw. 7, c. 27). As to her liability in respect of her *husband*, see *ante*, p. 562.

The legitimate children of a woman married a second time would, it may be added, be liable to contribute to her maintenance notwithstanding the existence of the second husband (*Arrowsmith v. Dickenson*) (*y*). In this case the woman and her second husband were both chargeable, and the relief was (under 4 & 5 Will. 4, c. 76, s. 56) "to be considered as given to the husband"; but it was held that this circumstance could not relieve the children from their obligation to maintain their mother.

No appeal
to quarter
sessions.

There is no appeal to quarter sessions against the decision of the justices (*R. v. London JJ., Re Grist*) (*z*).

(*s*) (1874) L. R. 9 Q. B. 254; 43 L. J. M. C. 62; 38 J. P. 84.

(*t*) (1710, *circa*) 16 Vin. Abr. 423.

(*u*) (1881) 6 Q. B. D. 615; 50 L. J. M. C. 92; 45 J. P. 521.

(*x*) [1906] 2 K. B. 896; 76 L. J. K. B. 66; 71 J. P. 5; 23 T. L. R. 17.

(*y*) (1888) 20 Q. B. D. 252; 58 L. T. 632; 52 J. P. 308.

(*z*) [1900] 1 Q. B. 438; 69 L. J. Q. B. 364; 64 J. P. 357.

As to proof of an allegation of "non-access," when a married man is sought to be made liable in respect of a child born of his wife with whom another man has lived as reputed husband, see *ante*, p. 296.

As to the maintenance of a wife by her husband, or *vice versâ*, see HUSBAND AND WIFE, *ante*, pp. 560—562.

As to application against a *seaman* for reimbursement of sums expended on his wife or children who have become chargeable during his absence on a voyage, see Merchant Shipping Act, 1894, ss. 182, 183. And as to the power of the guardians to assume control of a child, see *post*, p. 927.

Settlement and Removal.

If a poor person other than a casual pauper becomes chargeable to a place in which he has no settlement, the guardians of the union may cause him to be *removed* to his place of settlement, unless, indeed, he has acquired a status of *irremovability* from the union by residence therein for the space of *one year* without having received relief during that period. And now, where any person has resided for the term of *three years* in a parish in such manner and under such circumstances in each of such years as to render him irremovable, he must be deemed to be *settled* therein—*i.e.*, he is not only irremovable therefrom, but, if he became chargeable elsewhere, might by order be removed back to such parish (39 & 40 Vict. c. 61, s. 34). The section is applicable even to *illegitimate children under sixteen years of age*, who may in this way, when living with a mother or reputed father who is irremovable, acquire an independent settlement of their own in a union (*Fulham Union v. Woolwich Union*) (*a*). Nor will mere absence from the parish prevent the status of irremovability or settlement being obtained, unless there is a substantial *break of residence*; therefore, if the pauper, excluding the period of his absence, has resided in a parish for twelve months (without relief) he will be irremovable, and if for three years he will have gained a statutory settlement.

Removal of a pauper.

Status of irremovability.

Settlement by residence.

(*a*) [1907] A. C. 255; 76 L. J. K. B. 739; 97 L. T. 117; 5 L. G. R. 801; 71 J. P. 361; 23 T. L. R. 583.

The residence, however, must be for a period of three *consecutive* years, and separate periods of residence cannot be added together to make up the three years; as, *e.g.*, where the pauper *broke* his residence in the parish by absence on military service, even though his wife and children continued to live in his house and he himself intended to return home at the end of the service (*Newark Union v. Maidstone Union*) (*b*). But, where a status of irremovability has been acquired by a person who afterwards obtains relief, that status will not be lost by a change of residence *so long as the pauper continues in receipt of relief*, since periods of relief are excluded from computation (*Poplar Union v. West Ham*) (*c*). And, where a foreigner, having resided with his wife and little children in a parish for part of a year, went to America, intending to come back, but, before his return and after the expiration of the year, the woman and her children became chargeable, they were held to be irremovable from the parish (*Tewkesbury Union v. Birmingham Guardians*) (*d*).

Order of removal.

28 & 29 Vict. c. 79; and cf. Jervis' Act, s. 35 (*post*, p. 1016).

Upon the application of the guardians an *order of removal* is made by *two justices*, who must, however, by indorsement thereon, suspend the execution of the order of removal if it appears to them that the pauper is unable to travel by reason of sickness or any other infirmity, or that it would be dangerous for him to do so. Before the justices make the order, they should take the examination of such witnesses as can depose to the facts requisite to be proved as the foundation of the order, *viz.*, the inhabitancy, chargeability, and settlement of the pauper.

Acquired and derivative settlements.

It may be mentioned that every person born in England or Wales has a settlement somewhere, whether ascertainable or not, and this settlement is either derivative or acquired.

It is *derivative* when received from somebody else, *acquired* when obtained by the act of the person himself. A woman upon her marriage derives the settlement of her husband. This is, of course, upon the supposition that her husband has one to confer. Should his settlement

(*b*) (1905) 93 L. T. 602; 69 J. P. 413; 3 L. G. R. 1005.

(*c*) (1906) 94 L. T. 769; 70 J. P. 255; 4 L. G. R. 512.

(*d*) [1904] 2 K. B. 395; 73 L. J. K. B. 797; 90 L. T. 787; 68 J. P. 397.

be unknown, she does not absolutely relinquish that which she previously had. Again, the child of a man who has a known or discoverable settlement at the date of its birth takes such settlement by *derivation* from its father. On the other hand, should the latter have no such settlement, the child acquires by birth an original settlement in the parish in which he is born, which, unless defeated by some subsequent act of acquisition, will last to the end of his days. Acts of this kind, that is to say, acts by which a new and independent settlement may be acquired, depend for their efficacy upon various statutes. A man who has a freehold or copyhold estate in any parish, however small, cannot be removed from his property, and if he reside upon it for forty days he thereby acquires a settlement in the parish. Or he may do so by renting a tenement and paying poor-rate for one year. An apprentice bound by indentures gains a settlement by forty days' inhabitation in a parish; and mere residence for one year without receiving relief is, as we have seen, sufficient to render the resident *irremovable*; while such residence for three years confers upon him a *settlement*.

Acquired and derivative settlements—*contd.*

It is also provided that, (a) no person shall be deemed to have *derived* a settlement from any other person except in the case of a *wife from her husband*, and in the case of a *child under sixteen, which child shall take the settlement of its father (or of its widowed mother, as the case may be), up to that age*, and shall retain the settlement so taken until it shall acquire another; (b) an *illegitimate child* is to retain the settlement of its mother until it acquires another settlement, but it does not take her settlement if it is a derived one (*R. v. Marylebone*) (*e*); (c) if any child has not acquired a settlement for itself, or, being a female, has not derived a settlement from her husband, and it cannot be shown what settlement such child or female derived from the parent without inquiring into the *derivative* settlement of such parent, such child or female is deemed to be settled in the parish in which he or she was born (39 & 40 Vict. c. 61, s. 35).

Where an illegitimate child lived for three years in a parish with her mother and her mother's husband (being

(*e*) (1884) 13 Q. B. D. 15; 47 J. P. 743.

Removal
—*contd.*

still under sixteen at the end of the residence), it was held that she acquired a settlement in that parish (*West Ham Union v. Holbeach Union*) (*f*).

It would be impossible to refer to the numerous and conflicting authorities on this branch of the law, but it may be stated that the question whether a *wife* or *children*, who have no other settlement than that of the husband or parent, have become *irremovable* from any place depends in all cases upon the removability of the husband or parent (11 & 12 Vict. c. 111, s. 1); and this test is not to be confined to those cases in which a separation would otherwise be effected between husband and wife or parent and child (*West Ham Union v. St. Matthew, Bethnal Green*) (*g*).

The provision applies to the case of *illegitimate* as well as to that of *legitimate* children (per Lord Macnaghten in *Fulham Union v. Woolwich Union*) (*h*); and, as we have seen, unemancipated residence may found a settlement, so that where such children reside with their mother and putative father in a union from which the mother or putative father is *irremovable*, if their term of residence exceeds three years, they may acquire independent settlements of their own.

Offences.

Detention in
workhouse.

A *casual* pauper, *i.e.*, any destitute wayfarer or wanderer, applying for or receiving relief, is to be admitted, dieted, and set to work in such manner and under such regulations as the Local Government Board shall prescribe, and he is not entitled to discharge himself (under any circumstances) before 9 a.m. on the morning of the *second* day following his admission, nor before he has performed his allotted task. If he has been admitted on more than one occasion in one month in a casual ward of the same union (and every casual ward in the metropolis is to be deemed to be in the same union), the *fourth* day is substituted for the second. And any inmate, *not a casual*, may be detained by order of the guardians for twenty-four

(*f*) [1905] A. C. 450; 74 L. J. K. B. 868; 93 L. T. 557; 54 W. R. 137; 69 J. P. 442; 21 T. L. R. 713.

(*g*) [1894] A. C. 230; 63 L. J. M. C. 97; 70 L. T. 818; 42 W. R. 573; 58 J. P. 493.

(*h*) *Ante*, p. 787.

hours after he has given notice of his intention to quit, and for a longer time if he have previously discharged himself within a certain period. Thus, if he has discharged himself within a month of the notice, the period of detention is forty-eight hours; if he has discharged himself more than twice within two months, seventy-two hours, and, if (in the opinion of the guardians) he has discharged himself "frequently without sufficient reason," one hundred and sixty-eight hours (34 & 35 Vict. c. 108, ss. 4, 6; 45 & 46 Vict. c. 36, s. 4). The master, or porter of the workhouse, or officer in charge of the casual ward, may take before a justice, *without summons or warrant*, any inmate charged with misbehaviour punishable on summary conviction; and, if the offender is committed to prison and no constable is available, the master, porter, or officer may himself convey the offender to gaol, and for the above purpose is invested with all the powers of a constable (34 & 35 Vict. c. 108, s. 8).

The following *offences* relating to the administration of the poor law may be referred to.

- (a) If a *pauper* (i.) leaves the *casual* ward before he is entitled to discharge himself, or refuses to be removed to another workhouse; or (ii.) leaves a *workhouse* or asylum under the Poor Law Acts during the period for which he may be detained therein; or (iii.) refuses, whilst an inmate of the casual ward, workhouse, or asylum, to do the *work* or observe the prescribed *regulations*; or (iv.) wilfully gives a false name or makes a *false statement* for the purpose of obtaining relief, he is to be deemed an *idle and disorderly person*, and is punishable by *imprisonment*, with or without hard labour, for not more than ONE MONTH (34 & 35 Vict. c. 108, s. 7). For a *second* offence, the term of imprisonment is three months.

Pauper absconding, refusing to work, making false statements, &c.

An order of the Local Government Board prescribed as a task for "casuals," detained more than one night, the "breaking" of 7 cwt. of stone, or such other quantity not less than 5 cwt. nor more than 13 cwt. as the guardians, in view of the nature of the stone, might direct: the stone to be broken to such size as the guardians might prescribe. It was held that this order did not authorize the imposition of the task of

“pounding” 1 cwt. of stone (*R. v. Baddeley; Ex parte Moore*) (i).

- Returning after order of removal. (b) So, too, if a *pauper* returns within twelve months after removal under an order of justices without the consent of the guardians, and again becomes chargeable to the union, he is similarly punishable (28 & 29 Vict. c. 79, s. 7). And see *post*, p. 925.
- Making false statement to obtain relief. (c) And *any person* who, for the purpose of obtaining relief, for himself or any other person, wilfully gives a false name or makes a false statement, may be imprisoned for a like term (45 & 46 Vict. c. 36, s. 5). And see *post*, p. 925.
- Pauper destroying his own clothes, or damaging property of guardians. (d) If a *pauper* wilfully destroys or injures *his own clothes*, or damages any of the *property of the guardians*, he is deemed a *rogue and vagabond*, and is punishable by *imprisonment*, with or without hard labour, for not more than *three months* (34 & 35 Vict. c. 108, s. 7).
- Pauper refusing to work. (e) If a *pauper maintained in a workhouse* refuses to do work, or follow an occupation or employment such as is suited to his or her age, strength, and capacity, such pauper is liable to be *imprisoned*, as in the case of offence (f) (55 Geo. 3, c. 137, s. 5; 7 & 8 Vict. c. 101, s. 58). And cf. offence (a) (iii.).
- Pauper guilty of misbehaviour. (f) If a *pauper maintained in a workhouse* is guilty of *drunkenness or other misbehaviour*, he is liable to be *imprisoned*, with or without hard labour, for not more than *twenty-one days* (*ib.*). For a *second* offence the term is *forty-two days*. As to what may amount to *misbehaviour*, see, by way of illustration, the matters referred to in the consolidated general order of July 24th, 1847, *e.g.*, pauper having received temporary leave of absence, and wearing workhouse clothes, not returning at the appointed time; pauper not duly cleansing his person, using obscene or profane language, &c. But wilful disobedience to a lawful order is not necessarily “misbehaviour” within this section. Thus, where a man was ordered to be removed to another workhouse in which paupers from the union were by arrangement received, his refusal to go there, followed by his

leaving the workhouse and returning to it in two days, did not constitute such misbehaviour (*Mile End Guardians v. Sims*) (k).

- (g) If a pauper runs away from the workhouse and carries off any clothes or other things belonging to the parish (of which a duly authenticated mark, stamp or brand will be sufficient evidence), he is liable to be imprisoned, with or without hard labour, for not more than *three months* (55 Geo. 3, c. 137, s. 2).
- (h) If a person to whom or to whose wife or child (under sixteen) relief has been granted *out of the workhouse* refuses or wilfully neglects to do the *task-work* prescribed (such task being suited to the age, sex, strength, and capacity of such person), he is deemed *an idle and disorderly person*, and is punishable by imprisonment, with or without hard labour, for not more than *one month* (29 & 30 Vict. c. 113, s. 15). So, too, if such person wilfully *destroys or damages the tools, material, or other property* of the guardians.
- (i) If the *master of a workhouse* confines a pauper unlawfully, or abuses or ill-treats such pauper, or is guilty of any other misbehaviour, he is liable to a PENALTY not exceeding 20*l.* and, in default of *payment*, imprisonment, *without* hard labour, according to scale (p. 111) (4 & 5 Will. 4, c. 76, s. 93).

Pauper carrying away parish property.

Pauper outside workhouse refusing to do task-work, or damaging tools, &c.

Misbehaviour by master of workhouse.

The offences (a) to (h) inclusive are triable before *one* justice, but as to the limits of the power of punishment possessed by a single justice, see *ante*, p. 12.

As to relieving officer refusing relief in kind, or disobeying regulations, see *ib.* s. 98.

For numerous other offences by overseers, workhouse officials, &c., see "Oke's Synopsis," 14th edit., pp. 518 *et seq.*; as, *e.g.*, neglect of duty, disobedience to rules and regulations, altering or refusing inspection of accounts.

POST OFFICE.

The expression POST OFFICE includes any house, building, room, carriage, or place used for the purpose of the

Meaning of "post office," "postal packet," "mail bag."

(k) [1905] 2 K. B. 200; 74 L. J. K. B. 647; 92 L. T. 238; 69 J. P. 145.

Meaning of
"postal
packet,"
"mail bag."

post office, and any post office letter box. **POSTAL PACKET** means a letter, post card, reply post card, newspaper, book packet, sample or pattern packet, or parcel, and every packet or article transmissible by post, and includes a "telegram." **MAIL BAG** includes a bag, box, parcel, or any other envelope or covering in which postal packets "in course of transmission by post" are conveyed, whether it does or does not contain any such packets (8 Edw. 7, c. 48, s. 89).

Meaning of
"in course of
transmission
by post."

A postal packet is deemed to be *in course of transmission by post* from the time of its being "delivered to a post office" to the time of its being "delivered to the person to whom it is addressed"; and it is provided that delivery to a *letter carrier* or other authorized person is "delivery to a post office," while there is "delivery to the person addressed" if the packet is delivered at his house or office, or "to him or to his servant or agent or other person considered to be authorized to receive the packet, according to the usual manner of delivering that person's postal packets" (*ib.* s. 90).

Evidence of
thing being
"postal
packet."

Evidence that an article is *in course of transmission by post*, or has been accepted for transmission, is *sufficient evidence* that it is a "postal packet" (*ib.* s. 74).

Recovery of
postage and
sums from
officers of
post office.

Where any sum *not exceeding 20l.* is due from (a) any person for postage or in respect of "postal packets," or (β) any officer of the post office or his sureties in respect of moneys received in discharge of his duty, it may be recovered *summarily* as a *civil debt* (*ante*, p. 118; *ib.* ss. 7 (ii.), 78).

Procedure.

OFFENCES relating to the post office may be tried where they were committed, or where the offender is apprehended or is in custody; and (if "in respect of a mail, mail bag, postal packet, or money order, or any chattel, money, or valuable security sent by post") the trial may take place either where the offender is taken into custody or in any county through which such mail, mail bag, &c., passed in due course of conveyance by post (*ib.* s. 72).

As to *accessories*, see s. 72 (iii.).

Penalties.

PENALTIES are recoverable by *distress*; and, in default, imprisonment, *without* hard labour, according to scale (p. 111). The penalties are to be paid into the

Exchequer, unless applied under s. 2 of the Public Accounts and Charges Act, 1891 (*ib.* s. 75). As to suing for penalties in the High Court, see s. 70. APPEAL lies to the quarter sessions (*ib.* s. 71 (ii.)).

Offences Triable Summarily.

- (a) Sending or causing to be sent, or conveying, or performing any service incidental to conveying, *otherwise than by post*, a "letter" which is not exempt from the privilege of the Postmaster-General, *i.e.*, which is not sent by a private friend "in his way, journey, or travel," or by a messenger despatched on purpose, or by a carrier without reward and with the goods to which the letter relates, &c. (5*l.* per letter) (8 Edw. 7, c. 48, s. 34 (iv.)). "If any person is *in the practice* of doing any of the said things he shall 'forfeit' for *every week* during which the practice is continued *one hundred pounds*" (*ib.* s. 34 (v.)). The word "letter" in this section includes "packet," and it lies *on the defendant* to prove that the act complained of was done in conformity with the statute (*ib.* s. 34 (vi.), (vii.)).

Sending letters otherwise than by post.

Soldiers and seamen are entitled to certain "privileges" as to the despatch and receipt of letters; but any abuse of "privilege" on their part is punishable by penalty not exceeding 5*l.* (*ib.* s. 6).

- (b) Any person *employed to convey or deliver "mail bags" or "postal packets"* being guilty of drunkenness, or of negligence or misconduct whereby their safety may be endangered or their delivery delayed (20*l.*) (*ib.* s. 57). So also if he "gives any false information of an assault or attempt at robbery upon him"; and for other forms of misconduct see the section. As to an omission by an officer of the Post Office *to surrender his clothing* on ceasing to be such officer, and as to issue of search warrant, see *ib.* s. 44.
- (c) Placing, or attempting to place, in or against any *post office letter box* any fire, match, light, explosive or dangerous or deleterious substance, or any fluid or filth; or committing a nuisance in or against such box; or doing, or attempting to do, anything likely to injure the box, appurtenances or contents (10*l.*) (*ib.* s. 61).

Letter carrier guilty of drunkenness or endangering or delaying delivery.

Non-surrender of clothing.

Injuring, &c., post office letter box.

This offence is also punishable, *on indictment*, with twelve months' imprisonment.

Sending
noxious sub-
stance or
indecent
matter in
postal packet.

- (d) Sending, or attempting to send, a "postal packet" *in which is enclosed any explosive or dangerous substance*, or any filth, or any noxious or deleterious substance, or any sharp instrument not properly protected, or any noxious living creature, or any article or thing whatsoever which is likely to injure other postal packets or an officer of the post office; or which encloses any *indecent or obscene print, photograph, book, &c.*, or any indecent or obscene article; or having on such packet any words, marks, &c., of an *indecent, or obscene, or grossly offensive* character (10*l.*) (*ib.* s. 63). The detention of the packet in the post office will not exempt the sender from any proceedings which might have been taken if it had been delivered (*ib.* s. 63 (iii.)).

This offence is also punishable *on indictment* with twelve months' imprisonment. As to the liability of a defendant for the acts of his manager or servant, see *R. v. Key* (*kk*).

Disfiguring or
injuring pro-
perty of Post-
master-
General.

- (e) Affixing, or attempting to affix, *without due authority*, a placard, advertisement, document, board, or thing in or on, or painting or disfiguring, any post office, letter box, telegraph post, or *other property belonging to, or used by or on behalf of, the Postmaster-General* (2*l.*) (*ib.* s. 62).

Making, &c.,
a fictitious
stamp.

- (f) Making, dealing in, knowingly uttering or using for any postal purpose, or having in possession without lawful excuse, a *fictitious stamp*, or any die, instrument, or materials for manufacturing the same (20*l.*) (*ib.* s. 65). The fact that the defendant does not intend to use for any improper purpose a die capable of making a fictitious stamp does not afford a "lawful excuse" for its possession (*Dickens v. Gill*) (*l*).

The prosecution cannot, however, be undertaken except by the direction of the Commissioners of Inland Revenue. For definition of "fictitious stamp," see s. 65 (iv.); and as to seizure and forfeiture, see s. 65 (iii.).

(*kk*) (1908) 56 W. R. 784.

(*l*) [1896] 2 Q. B. 310 ; 75 L. T. 32.

(g) Placing, or maintaining, *without due authority*, on a house, wall, window, or other place, the words "post office" or "postal telegraph office"; or "letter box," accompanied by any words or marks which may *reasonably lead the public to believe that it is a post office letter box*; or any words or marks which may *reasonably lead the public to believe that a house is a post office, or that a box is a post office letter box* (2*l.*) (*ib.* s. 66). And anyone who neglects to comply with a notice from the Postmaster-General to remove or efface such words, marks, &c., is subject to a like penalty; while if the offence is continued after a previous conviction there is a *daily* penalty of 5*s.* (*ib.*).

Representing premises to be a post office or letter box.

(h) Wilfully *obstructing*, or inciting anyone to obstruct, an officer of the post office in the execution of his duty, *or obstructing the course of business in a post office* (2*l.*) (*ib.* s. 67 (i.)). For refusing to leave the office after the obstruction, there is a further penalty of 5*l.* (*ib.* s. 67 (ii.)).

Obstructing post office officials.

(i) Forging, or without authority altering, a *telegram*, or knowingly uttering such a telegram, or transmitting a message which is known not to be a telegram, *whether with or without an intent to defraud* (10*l.*) (47 & 48 Vict. c. 76, s. 11).

Forging or altering a telegram.

This offence is also punishable *on indictment* with twelve months' imprisonment.

(j) A person in the employment of a telegraph company *improperly divulging* to any person the purport of a telegram (20*l.*) (47 & 48 Vict. c. 76, s. 11).

Divulging contents of telegram.

This offence is also punishable *on indictment* with twelve months' imprisonment, and a FINE of 20*l.*

(k) Fraudulently *removing* from any instrument (including a post letter or its cover) any *adhesive stamp* with intent to use it again, *or fraudulently affixing* any used stamp to any other instrument than that for which the stamp has been already used, *or uttering* such other instrument, *or selling* a stamp so removed (EXCISE PENALTY 50*l.*, recoverable only in the High Court) (54 & 55 Vict. c. 39, ss. 9, 121).

Fraudulently removing an adhesive stamp.

(l) *Making*, or *sending* by post or otherwise, any envelope, wrapper, or *paper in imitation* of one issued by the Postmaster-General, or a foreign or colonial

Prohibition of imitation of post office

stamps, envelopes, forms, and marks.

postal authority, or having thereon any words or marks which reasonably lead the recipient to believe that a "postal packet" is sent on His Majesty's service; or making, or sending by post or otherwise paper bearing any *stamp* or mark in imitation of a post office stamp or mark (2l.) (8 Edw. 7, c. 48, s. 64).

Offences Triable on Indictment.

We have already seen that each of the offences (c), (d), (i), and (j), is triable *on indictment* as well as before a court of summary jurisdiction, while each of the following offences (m), (n), (o), (p) and (q), is, of course, also triable *summarily*, with the consent of the accused, *if he be under sixteen years of age*. (See *ante*, p. 136.)

Employee of post office stealing postal packet.

(m) *Person employed in any business of the post office stealing, embezzling, secreting, or destroying a "postal packet" in course of transmission by post. [Felony: penal servitude for seven years] (8 Edw. 7, c. 48, s. 55).*

If the letter contains any *chattel, money, or valuable security*, the maximum punishment is penal servitude for life, and the offence is then triable only at assizes.

Stealing mail bag, or postal packet or chattel therefrom.

(n) *Any person stealing any chattel, money, or valuable security from a "postal packet" in course of transmission by post, or stealing a "mail bag," or stealing such a "postal packet" from a mail or "mail bag" or from a "post office" or an officer of the Post Office, or stopping a mail with intent to rob or search it. [Felony: penal servitude for life] (ib. s. 50).*

Stopping mail.

These offences are triable only at assizes.

A man who fraudulently induced a postman to hand over a letter addressed to another person was held rightly convicted of *stealing* it (*R. v. James*) (m).

Fraudulently retaining or secreting mail bag or postal packet.

(o) *Any person fraudulently retaining, or wilfully secreting or detaining, or (when required by an officer of the Post Office) neglecting to deliver up, a "postal packet" in course of transmission by post which ought to have been delivered to any other*

(m) (1890) 24 Q. B. D. 439; 62 L. T. 578; 54 J. P. 615; 17 Cox, 24.

person, or any “*postal packet*” in course of transmission by post or any “*mail bag*” which has been found by him or by any other person. [Misdemeanour: fine and imprisonment] (*ib.* s. 53).

It was held that the Postmaster-General was not entitled, on an indictment under the Post Office (Offences) Act, 1837 (now repealed), to claim restitution of property found on a prisoner which was the proceeds of larceny in the post office (*R. v. Jones*) (n). But as to the power of awarding *compensation* in cases of *felony*, see *ante*, p. 196.

(p) *Person employed in the business of the post office*, contrary to his duty, *opening* or suffering to be opened any “*postal packet*” in course of transmission by post, or *wilfully detaining* or delaying, or suffering to be detained or delayed, any such packet. [Misdemeanour: fine or imprisonment, or both] (8 Edw. 7, c. 48, s. 56).

Employee of post office opening or delaying postal packet.

(q) Any person *not in the employment of the Postmaster-General* maliciously, and with intent to injure any other person, *opening*, or causing to be opened, a letter which ought to have been delivered to that other person, or doing anything to *prevent or impede the due delivery* of such a letter. [Misdemeanour: FINE of 50*l.*, or imprisonment for six months] (8 Edw. 7, c. 48, s. 54 (i)).

Persons not employees of the post office opening or impeding delivery of letters.

The parent, or person in the position of the parent or guardian, of the person to whom the letter is addressed cannot, however, be convicted under this section (*ib.* s. 54 (ii.)).

“*Letter*” in this section means a “*postal packet*” in course of transmission by post and any other letter which has been delivered by post (*ib.* s. 54 (iv.)).

The prosecution cannot be undertaken except by the direction or with the consent of the Postmaster-General (*ib.* s. 54 (iii.)).

The *receiver* of a “*mail-bag*,” “*postal packet*,” &c., who knows it to have been feloniously stolen, taken, embezzled, or secreted, and to have been sent or intended to be sent by post, is liable to be treated as the principal felon (*ib.* s. 52).

Receiver of stolen mail bag or postal packet.

Soliciting
commission of
felony or mis-
demeanour.

If any person *solicits* or endeavours to procure another to commit an offence *punishable on indictment* under the Post Office Act, 1908, he is guilty of a *misdemeanour* and liable to two years' imprisonment (*ib.* s. 69).

"Ship
letters."

As to "ship letters," the duties of masters of vessels as to "mail bags" and "postal packets," and as to "mail bags" sent by vessels employed under the Post Office, see 8 Edw. 7, c. 48, ss. 26—32, 51.

As to officers of the Post Office issuing MONEY ORDERS with fraudulent intent, see *ib.* s. 58; and see further as to "money" or "postal" orders, *ante*, p. 483.

And see WIRELESS TELEGRAPHY, *post*, p. 951.

PRISONS.

Reception of
child at
breast.

The committing magistrate may authorize the reception into prison of an infant child of a female prisoner provided that such child is still at the mother's breast (Gen. Rules for Gov. of Prisons, 1899, r. 19).

"Places of
detention."

As to the provision of "places of detention" for "juveniles," under ss. 108—110 of the Children Act, see *ante*, p. 122. As to the management and discipline of such institutions, see rules of May 21st, 1909 (S. R. & O. 1909, No. 591); and order of March 8th, 1909, under s. 110 (ii.).

Amongst the various offences relating to prisons, the following may be specially referred to:—

Offences Triable Summarily.

Introducing
liquors or
tobacco into
a prison.

- (a) Any person who *introduces*, or attempts to introduce, into a prison (other than a convict prison or a naval or military prison), *spirituous or fermented liquors or tobacco* contrary to the regulations, commits an offence: and any prison officer, who suffers such liquors or tobacco to be sold or used in the prison, commits a like offence (28 & 29 Vict. c. 126, s. 38). As to *venue*, see *ib.* s. 57.

[As to other prisons, see 2 & 3 Vict. c. 56, s. 22, which imposes a PENALTY of 5*l.*]

The accused must, at the outset, be afforded the OPTION OF TRIAL BY JURY (*ante*, p. 63).

PENALTY.—FINE, not exceeding 20*l.*, and, in default of distress, imprisonment, *without* hard labour, according to

scale (p. 111) ; *or*, IMPRISONMENT, *without* hard labour, for not more than SIX MONTHS ; *or*, *both* fine and imprisonment. If the offender is a prison officer he is also liable to forfeit his appointment and any arrears of salary due to him.

- (b) Any person who *conveys*, or attempts to convey, a letter, document, or other *article in or out of a prison* (other than a convict prison or a naval or military prison), *contrary to regulations*, commits an offence (28 & 29 Vict. c. 126, s. 39). Conveying any article in or out of prison in contravention of regulations.

PENALTY.—FINE, not exceeding 10*l.*, and, in default of distress, imprisonment, *without* hard labour, according to scale (p. 111). A prison officer is further liable to forfeiture, as in (a).

- (c) If a prisoner confined in a local prison is charged with (a) mutiny or incitement to mutiny, *or* (β) gross personal violence to any officer or servant of the prison, the visiting committee (or a specially appointed stipendiary magistrate) may (in case of a male prisoner under sentence of penal servitude, or convicted of felony, or sentenced to hard labour) order the infliction of *corporal punishment*. This order can only be made, after inquiry on oath, at a specially convened meeting, consisting of not less than three persons, two of whom must be justices ; and it requires confirmation by the Secretary of State (61 & 62 Vict. c. 41, s. 5 ; Rules of 1899, r. 84). As to the punishment of minor offences against prison discipline, see rr. 82, 83. Power to inflict corporal punishment.

Indictable Offences.

- (d) Any person who aids a prisoner in attempting to escape from *a prison (other than a convict or a naval or military prison)*, or brings into the prison a disguise, letter, or any other article or thing, with intent to facilitate such escape, is guilty of felony [two years' imprisonment] (28 & 29 Vict. c. 126, s. 37). The word "thing" includes a crowbar (*R. v. Payne*) (o). Aiding prisoner to escape from prison.
- (e) It is an offence (punishable in degrees dependent on the gravity of the crime with which a prisoner is Aiding escape from any gaol.

(o) (1866) L. R. 1 C. C. R. 27 ; 35 L. J. M. C. 170 ; 14 L. T. 416.

Assisting
escape from
officer.

charged) to aid a prisoner in an attempt to escape from *any gaol*; and it is, further, a felony to assist any prisoner to escape from an officer conveying him to gaol for treason or any felony, except petty larceny (16 Geo. 2, c. 31, ss. 1, 3).

Loss of office
or pension.

It is, moreover, an indictable offence to *rescue* any prisoner charged with treason, felony, or misdemeanour; or for any prisoner lawfully detained on any such charge to *break out* of his place of confinement (see Stephen's Digest, 6th edit., arts. 159—171).

Imprisonment for FELONY, with *hard labour* or exceeding *twelve months*, vacates a benefice or public *office* and deprives a prisoner of any *pension* from public funds (33 & 34 Vict. c. 23, s. 2).

PROCURATION.

Procuration.

The following misdemeanours relating to *procuration* are defined by the Criminal Law Amendment Act, 1885, and, in case of an adult, are triable at assizes only.

Evidence.

The husband or wife of the defendant may be called as a witness either for *the prosecution* or defence *and without the defendant's consent* (*ante*, p. 173). But no person can be convicted of any one of these offences on the evidence of one witness only, unless such witness be *corroborated* in some material particular by *evidence implicating the accused*. As to the *procedure* where the offence is against a child or young person under *sixteen*, see title CHILDREN, *ante*, pp. 379—384.

The maximum punishment in each case is two years' imprisonment, with hard labour.

Procuring girl
under twenty-
one to have
unlawful con-
nexion with
person other
than the
accused.

(a) *Procuring*, or attempting to procure, *any girl or woman under twenty-one years of age*, not being a common prostitute, or of known immoral character, to have unlawful carnal connexion (either within or without the dominions of the Crown) *with any other person or persons* (48 & 49 Vict. c. 69, s. 2 (i.)).

Procuring
female to
become a
prostitute.

(b) *Procuring*, or attempting to procure, *any woman or girl* to become (either within or without the dominions of the Crown) *a common prostitute* (*ib.* s. 2 (ii.)).

Procuring
female to
become
inmate of a
brothel
abroad.

(c) *Procuring*, or attempting to procure, *any woman or girl* to leave the United Kingdom with intent that she may become an inmate of a brothel elsewhere (*ib.* s. 2 (iii.)).

- (d) *Procuring*, or attempting to procure, *any woman or girl to leave her usual place of abode in the United Kingdom* (such place not being a brothel) with intent that she may, for the purpose of prostitution, become an *inmate of a brothel* within or without the dominions of the Crown (*ib. s. 2 (iv.)*).
Procuring female to become inmate of any brothel.
- (e) *By threats or intimidation*, procuring or attempting to procure, *any woman or girl to have any unlawful carnal connexion* either within or without the dominions of the Crown (*ib. s. 3 (i.)*).
Procuring female, by threats, to have unlawful connexion with any person.
- (f) *By false pretences or false representations* procuring *any woman or girl*, not being a common prostitute or of known immoral character, to have *any unlawful carnal connexion* either within or without the dominions of the Crown (*ib. s. 3 (ii.)*). Convictions have taken place under this sub-section where a man has induced a woman to have connexion *with him* on the pretence that he was unmarried and able to contract a legal marriage with her, but the matter does not seem to have been before the Court of Crown Cases Reserved (62 J. P. 310).
Procuring female, by fraud, to have unlawful connexion with any person.
Seduction by fraud.

And as to the administration of *drugs* to females with a view to carnal connexion, see *ante*, p. 426.

PUBLIC HEALTH.

The Public Health Act, 1875, invests local authorities with the power of regulating all matters connected with sanitation, and divides England, except the metropolis, into urban and rural sanitary districts. The powers, rights, duties, and obligations of these authorities have been extended and increased by numerous statutes, including the Local Government Acts of 1888 and 1894, as well as by the Public Health Acts Amendment Acts, 1890 and 1907, and the Private Street Works Act, 1892, where the three last-named Acts have been adopted or applied. "P. H. Act" signifies, throughout, the Act of 1875.

By the Local Government Act, 1894, the authorities are constituted urban and rural district councils, and all the functions formerly exercised by local authorities under the Act of 1875, and the Acts incorporated therewith, are now transferred to these councils, as also some of the powers theretofore exercised by justices of the

"P. H. Act,"
38 & 39 Vict.
c. 55.

Urban and
rural district
councils.

peace, such as the granting of pawnbrokers' licences, licences to sell game, &c.

Duties of district councils.

These councils are elective bodies, and upon them devolves the duty of providing a proper water supply and sufficient drainage for their district, of preventing nuisances, and generally of carrying into effect the provisions of the Acts above mentioned.

Bye-laws.

They have special powers under certain sections of the Public Health Acts and the incorporated Acts to make regulations and *bye-laws*, e.g., for cleaning streets and the removal of refuse, regulating common lodging-houses, as to the erection of new buildings, &c.; and they may thereby impose reasonable penalties not exceeding 5*l.* for each offence, and in the case of a continuing offence a further penalty not exceeding 2*l.* for each day after written notice (38 & 39 Vict. c. 55, ss. 182—188); and see the Public Health Acts Amendment Act, 1890 (53 & 54 Vict. c. 59, ss. 9, 13, 20, 23, 26). Bye-laws under these Acts require confirmation by the Local Government Board. As to the *publication* and *proof* of such bye-laws, see ss. 185, 186, of the Public Health Act, 1875, and as to bye-laws in *boroughs*, see 45 & 46 Vict. c. 50, s. 24 (*ante*, p. 353).

Legal Proceedings.

PENALTIES recoverable summarily.

All offences under the Public Health Act, 1875, and all penalties and expenses thereby directed to be recovered in a summary manner, may be prosecuted and recovered before two justices in petty sessions, or a stipendiary magistrate. Proceedings for the recovery of a penalty can only be taken by some *person aggrieved* or by the *local authority*, unless express provision is made or the consent of the Attorney-General is obtained (38 & 39 Vict. c. 55, ss. 251, 253). The servant or agent of aggrieved parties may lay the information (*Ross v. Taylerson* (*p*); and cf. *ante*, p. 37). Any information, complaint, warrant or summons may contain, in the body thereof or in a schedule thereto, several sums (7 Edw. 7, c. 53, s. 8). As to the recovery of penalties for a *continuing* offence under s. 158 of the Act of 1875, see *Airey v. Smith* (*q*).

(*p*) (1898) 62 J. P. 181.

(*q*) *Ante*, p. 35; and *post*, p. 857.

Proceedings may, in some cases, be taken by a local authority as to nuisances or offensive trades arising or carried on *without* their district and as to houses, &c., so situate (cf. 38 & 39 Vict. c. 55, ss. 108, 115, &c.).

All proceedings must be commenced *within six months* and conducted in accordance with the provisions of the Summary Jurisdiction Acts (and cf. the Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61)).

In the absence of express provision, the local authority as informer takes the penalty; if the information is not laid by the authority, half the penalty goes to the informer, the other half to the authority (P. H. Act, s. 254). Appropriation of penalties.

If any person fails to pay any rate made by an urban authority under the Act for *fourteen days after demand* in writing, or if he quits or is about to quit the premises and refuses to make payment of a rate then due and demanded in writing, a summons may be obtained from a justice within six months from the expiration of the fourteen days after demand or from the refusal to pay, as the case may be. Should the defaulter *fail to appear or to show sufficient cause for non-payment*, a court of summary jurisdiction may make an ORDER for payment; and if a minute of the order be duly served on the defendant and be not complied with, the court may by warrant cause the amount due to be levied by *distress*, together with the costs of levy (38 & 39 Vict. c. 55, s. 256). The distress will be levied under the Summary Jurisdiction Acts (*ante*, p. 108); and if the distress prove insufficient, the amount will be enforceable as a "civil debt" (*ante*, p. 118). The validity of the rate is proved *prima facie* by production of the rate book (*ib.* s. 223). Recovery of RATES made by urban authority.

Any number of local rates and taxes due from the same person may be included in the same information, complaint, summons, order, warrant or other document (25 & 26 Vict. c. 82, s. 1). As to the issue of process for recovery of rates, see title POOR, *ante*, p. 779. Distress warrant.

The rates are to be *published* as poor rates, though the omission of publication does not make a rate (which has not been appealed against) void. But as to the necessity for publication where a local Act authorized a levy "as in the case of the poor rate," see *Beeson v. Derby Overseers* (r).

Justices not
disqualified in
certain cases.

A justice is not disqualified from acting by reason of his being a member of any local authority, or being one of several ratepayers liable to contribute to or be benefited by any rate or fund out of which any expenses incurred by such authority are to be defrayed (38 & 39 Vict. c. 55, s. 258, and see *ante*, p. 19).

Appearance
of local
authority.

A local authority may appear in, or institute, any legal proceeding by their clerk, or by any officer or member authorized generally or in respect of any special proceeding by resolution of such authority (*ib.* s. 259).

Service of
summons,
notices, &c.

Notices, orders, and other documents may be served in any of the usual methods, *or* by post by a prepaid letter, *or*, where addressed to the owner or occupier of premises, by delivering the same or a true copy thereof to some person on the premises; while, if there is no person on the premises who can be so served, service may be effected by fixing the document on some conspicuous part of the premises (cf. *West Ham Corporation v. Thomas*) (*rr*). If served by post, it is sufficient to prove that the document was properly addressed, prepaid, and put into the post, and it will be deemed to have been served when the letter would be delivered in the ordinary course of post. Moreover, it is sufficient, in the case of any notice required to be given to an owner or occupier, that it should be addressed to the "owner" or "occupier" of the premises named, without further name or description (*ib.* s. 267).

It has been held under a similar provision of the Public Health (London) Act, 1891, s. 128, that the service of a *summons* might be effected in a similar way, *i.e.*, by fixing it in some conspicuous part of the premises, when no person could be found on whom it could be served (*R. v. Mead*) (*s*).

Appeal.

The regulations governing the right and mode of APPEAL are contained in ss. 268, 269, of the Act of 1875, and in s. 7 of the Act of 1890; and see *ante*, p. 155.

An appeal lies to quarter sessions under the Private Street Works Act, 1892, as (*e.g.*) where the court deals (under s. 8) with the objections of an owner to the

(*rr*) (1909) 6 L. G. R. 1043; 73 J. P. 65.

(*s*) [1894] 2 Q. B. 124; 63 L. J. M. C. 128; 42 W. R. 442; 70 L. T. 766; 58 J. P. 448.

proposals of the authority upon any of the grounds set out in s. 7 (*Pearce v. Maidenhead Corporation*) (t).

Where any part of the *Public Health Acts Amendment Act*, 1907, has been APPLIED, the powers of APPEAL to quarter sessions are greatly extended as to the orders, &c., of a local authority under that Act (7 Edw. 7, c. 53, s. 7).

The authority may *summarily recover expenses* incurred by them when an owner or occupier refuses to comply with a notice for closing unauthorized drains (38 & 39 Vict. c. 55, s. 21); in providing new drains (s. 23); pulling down unauthorized buildings over sewers (s. 26); providing proper sanitary accommodation (s. 36); examining and executing necessary drainage (s. 41); purifying houses (s. 46); abating nuisances in urban districts (s. 47); removing manure, &c. (s. 49); supplying houses with water (s. 62); closing polluted wells (s. 70); rendering house where nuisance exists fit for habitation (s. 98); the payment of costs and expenses incurred in the execution of provisions relating to nuisances (s. 104); cleaning houses to prevent infection (s. 120); the paving, &c., of private streets (s. 150). Owners and occupiers are also liable for expenses of the authority under the Waterworks Clauses Act, 1847, ss. 46, 69, 72, and the other incorporated Acts; see also 53 & 54 Vict. c. 70, s. 38 (ix.) (the Housing of the Working Classes Act, 1890), and 55 & 56 Vict. c. 57 (Private Street Works Act, 1892).

As to houses within the Housing, Town Planning, &c., Act, 1909, where the notice of a local authority requiring premises to be made "reasonably fit for human habitation" has not been complied with, and the landlord has not given notice declaring his intention of closing the house, the authority may do the work required and recover the expenses *summarily* as a "civil debt" (*ante*, p. 118) (9 Edw. 7, c. 44, s. 15 (v.)). As to the notices and procedure, see 53 & 54 Vict. c. 70, ss. 49, 50, and 3 Edw. 7, c. 39, s. 13 (*ib.* s. 15 (viii.)).

So, also, where a local or sanitary authority has executed works in connection with "lodging-houses" for the working classes, which an owner or other person has failed to execute when required under the bye-laws, the expenses may be recovered summarily (*ib.* s. 16 (iii.)).

(t) [1907] 2 K. B. 96; 76 L. J. K. B. 591; 96 L. T. 639; 71 J. P. 230; *cf. post*, p. 852.

Summary recovery of expenses by authority; *cf. ante*, p. 118.

HOUSING,
TOWN
PLANNING,
&c., ACT,
1909
(9 EDW. 7,
c. 44).

HOUSING,
&c., ACT, 1909
—*contd.*

Again, where a dwelling-house has been closed as unfit and the authority has made the tenant an allowance for "his expense in removing," the amount (in default of agreement) may be fixed by a court of summary jurisdiction and recovered from the owner as a "civil debt" (*ante*, p. 118) (s. 17 (v.)).

Back-to-back houses are (except in certain cases) to be deemed unfit for human habitation (s. 43).

Where property is "injuriously affected" or "increased in value" by a "town planning scheme," any amount due for compensation or "betterment" to a person aggrieved or to a responsible authority may be recovered summarily as a "civil debt" (*ante*, p. 118) (s. 58 (v.)).

Justices may
make order
for entry on
lands, &c.

A court of summary jurisdiction may, upon the application of a local authority by summons, make an order authorizing entry upon any lands or premises for surveying purposes, or for repairing or examining works, drains, &c., in case the owner refuses admission (38 & 39 Vict. c. 55, s. 305); as, *e.g.*, where a notice has been served under s. 36, *post*, p. 817. Justices may inquire whether the local authority have adopted the proper procedure, as, *e.g.*, by giving a proper notice under the section last cited and doing everything which is made by the statute a condition precedent to a right of entry; but the court is not entitled to review such a notice and inquire as to the sufficiency of existing arrangements (*Robinson v. Mayor of Sunderland* (u); and see *Sutcliffe v. Sowerby Bridge U. D. C.* (uu). See also 38 & 39 Vict. c. 55, ss. 58, 85, 137.

This power is apart from the special right of entry given in particular cases, *e.g.*, under *ib.* ss. 41, 102, 119.

Order to
enforce
execution
of Act.

And if an occupier prevents an owner from carrying out any provisions of the Act, a justice may by order require the occupier to permit the works to be executed (*ib.* s. 306). The occupier must, of course, be duly summoned to answer the complaint before such an order can be made; but, if the order be not complied with within twenty-four hours after it is made, the occupier becomes liable to a penalty of 5*l.* per day (*ib.*).

(u) [1899] 1 Q. B. 751; 68 L. J. Q. B. 330; 80 L. T. 262; 63 J. P. 341.

(uu) (1909) 100 L. T. 967; 7 L. G. R. 822; 73 J. P. 385.

The clerk of a rural district council is required to forward to the medical officer of health of the county copies of certain documents, which, under s. 45 of the Housing of the Working Classes Act, 1900, the district council is required to forward to the county council; and the medical officer of health is directed to furnish information to the medical officer of health of the county. In case of default, the clerk or medical officer, *on information being laid by the county council*, is liable on summary conviction to a PENALTY of 10*l.* (9 Edw. 7, c. 44, s. 69).

Neglect of duty by clerk or medical officer of health of district council (Housing, Town Planning, &c., Act, 1909).

Anyone who wilfully obstructs the execution of the P. H. Act, or injures or defaces any *notice board*, &c., is liable to a PENALTY of 5*l.* A similar liability attaches to any occupier who refuses to supply to the authority, or wilfully mis-states, the name of the owner of the premises (s. 306).

Damage to property of the authority. "Obstruction."

But the Act does not, by s. 102 (cf. *post*, p. 835), authorize an entry to examine as to the existence of a nuisance *without permission first being requested*; so that, when members of an authority made their way into premises and were interfered with by the occupier, such interference was held not to constitute obstruction (*Consett U. D. C. v. Crawford*) (x).

Where no special penalty is provided, wilful damage to the works or property of the authority is punishable by a PENALTY of 5*l.* (P. H. Act, s. 307). And see Public Health Act, 1890, s. 48.

Proceedings against Local Authority.

In the following cases summary proceedings may be taken *against* a DEFAULTING AUTHORITY, and *penalties* recovered by any *person aggrieved* in manner provided by 38 & 39 Vict. c. 55, s. 251 (*ante*, p. 804). All PENALTIES are recoverable by *distress*, and, in default, imprisonment, *without* hard labour, according to scale (p. 111).

Proceedings against defaulting authority.

1. Where the authority has undertaken to remove house refuse, *or* to cleanse earth-closets, privies, ashpits, &c., and neglects to do so within *seven days* after notice from the occupier (38 & 39 Vict. c. 55, s. 43). And see *post*, p. 820.

House refuse, &c.

(x) [1903] 2 K. B. 183; 88 L. T. 836; 72 L. J. K. B. 571; 67 J. P. 309.

PENALTY.—FINE not exceeding 5s. per day during continuance of default, to be paid to the occupier.

Water supply.

2. Where the authority neglects or refuses to lay communication pipes for the supply of water (within *seven days* after being requested by the occupier, or by the owner where the house does not exceed 10l. in annual value) to any house in any street in which they have laid down pipes, provided that the owner or occupier has tendered any water rate payable in advance (10 & 11 Vict. c. 17, ss. 44, 45). The obligation extends only to districts or parts of districts where the authority lay pipes for public supply.

PENALTY.—FINE not exceeding 5l. and 2l. for every day of default. As to *neglect* to continue supply, or to furnish water to an owner or occupier who has paid or tendered the rate, see *ib.* s. 43, which imposes a PENALTY of 10l. and a daily penalty of 2l. after notice in writing.

Breaking up of streets.

3. Where the authority breaks up any street (for the purpose of laying water pipes) improperly or without proper notice, or fails to keep it in repair for six months after it has been made good (*ib.* s. 33).

PENALTY.—FINE not exceeding 5l. for each offence, and 5l. for every day of default after receipt of notice.

Dangerous reservoirs.

4. Where the authority fails to do the works ordered by the court in the case of dangerous reservoirs (26 & 27 Vict. c. 93, s. 5). Justices have power, on complaint by a person interested or on their own view, to inquire as to a reservoir in a dangerous state, and they may make an order for its immediate repair, or direct the authority to execute any necessary works (*ib.* ss. 3, 4).

PENALTY.—FINE not exceeding 10l. for every day of default.

Offensive ditches, &c., adjacent to boundaries of districts.

5. Where any watercourse or open ditch near to or forming the boundary of the districts of any two authorities (urban or rural) is foul and injurious to one of the districts, a court of summary jurisdiction may ORDER the execution of the works necessary for cleansing the same and may determine how and by whom the cost of such works shall be borne (38 & 39 Vict. c. 55, s. 48).

Claims for compensation.

A local authority is not bound to make compensation for damage caused in the exercise of its statutory powers

unless such damage would have given a cause of action against an individual acting without statutory powers (*Hall v. Mayor of Bristol* (y); *Hammersmith and City Railway Co. v. Brand*) (z).

Claims for compensation—*contd.*

But, subject to this, where any person sustains damage by reason of the exercise of any powers under the Public Health Act, 1875, in relation to any matter as to which he is not himself in default, he is entitled to *full* compensation (s. 308). Thus, where a justice refused to condemn, as unwholesome, meat which had been seized by an officer of the local authority, the owner recovered from the authority the costs of the proceedings before the magistrate, in addition to the compensation found due to him by arbitrators for the loss he had sustained (*Bater v. Birkenhead* (Mayor)) (a).

In the absence of special provision, any dispute *as to the fact of damage, or the amount of compensation*, is to be settled by arbitration; but all questions referable to arbitration under the Public Health Act, 1875 (see ss. 52, 61, 150, 155, 228, 308, 328), may, *where the amount is under 20l.*, be determined, *at the option of either party*, before a court of summary jurisdiction. The court may require a report to be made by any competent surveyor not being the surveyor of the local authority, and may determine the amount of costs incurred and by whom such costs are to be paid (s. 181). And see s. 22, dealing with the use of sewers by persons outside the district.

Claims under 20l. assessable by court of summary jurisdiction.

The decision may be given verbally, but it appears doubtful whether magistrates, sitting *as arbitrators*, have power to make an *order* for the payment of the amount found by them to be due (*Cook v. Ipswich Board*) (b).

Moreover, in case any question arises as to the amount of compensation to be paid by the authority for lands taken or injuriously affected, and the *claim does not exceed 50l.*, the amount may be determined before justices as provided by the Lands Clauses Act, 1845, which is incorporated by P. H. Act, s. 176. In such case, upon the

Compensation not exceeding 50l. for lands taken or injuriously affected.

(y) (1867) L. R. 2 C. P. 322; 36 L. J. C. P. 110; 15 L. T. 572.

(z) (1869) L. R. 4 H. L. 171; 38 L. J. Q. B. 265; 21 L. T. 238.

(a) [1893] 2 Q. B. 77; 62 L. J. M. C. 107; 69 L. T. 220; 58 J. P. 7.

(b) (1871) L. R. 6 Q. B. 451; 40 L. J. M. C. 169; 24 L. T. 579;

19 W. R. 1079.

Compensation for lands taken, &c.—
contd.

application of either party, the other may be summoned to appear before two justices. If the parties appear, or, in the absence of any of them, upon proof of due service of the summons, the justices may examine such parties, or any of them, upon oath, and determine the amount of compensation to be paid, as also the amount to be paid in respect of the costs which are in their discretion (8 & 9 Vict. c. 18, ss. 22, 24).

It has been held that the justices cannot decide anything except the *amount* of compensation; that they have no power to direct *payment* of the amount; and that, the adjudication of the justices not being an "order," the proceedings are not within the Summary Jurisdiction Acts, so that, *e.g.*, the six months limit as to the commencement of proceedings does not apply (*R. v. Edwards*) (*c*).

P 1004.

Proceedings by Local Authority.

It is now proposed to deal with such matters, under the Public Health Act, 1875, as most frequently give rise to the necessity for application to a court of summary jurisdiction to secure the enforcement of penalties or the recovery of expenses. These matters are arranged under separate titles in the following order:—

- (1) Sewerage and Drainage (ss. 13—26).
- (2) Disposal of Sewage (ss. 27—41), *post*, p. 816.
- (3) Scavenging and Cleansing (ss. 42—47), *post*, p. 820.
- (4) Collection of Offensive Matter (ss. 48—50), *post*, p. 822.
- (5) Water Supply (ss. 51—70), *post*, p. 823.
- (6) Regulation of Cellar Dwellings and Lodging-houses (ss. 71—90), *post*, p. 829.
- (7) Nuisances (ss. 91—111), *post*, p. 831.
- (8) Offensive Trades (ss. 112—115), *post*, p. 837.
- (9) Unsound Meat (ss. 116—119), *post*, p. 839.
- (10) Infectious Diseases, &c. (ss. 120—140), *post*, p. 843.
- (11) Mortuaries (ss. 141—143), *post*, p. 847.
- (12) Highways, Streets and Buildings (ss. 144—163), *post*, p. 847.
- (13) Towns Improvement Clauses Act, 1847, *post*, p. 858.
- (14) Slaughterhouses, *post*, p. 860.
- (15) Markets and Fairs Clauses Act, 1847, *post*, p. 861.

(*c*) (1884) 13 Q. B. D. 586; 53 L. J. M. C. 149; 51 L. T. 586; 49 J. P. 117.

(1) SEWERAGE AND DRAINAGE.

All existing and future sewers within the district of a local authority, together with all buildings and materials belonging to them, are vested in and under the control of such authority, except (i.) sewers made by any person or company for his or their own profit; (ii.) sewers made for draining land under any private or local Act of Parliament, or for purposes of irrigation; and (iii.) sewers under the authority of commissioners of sewers appointed by the Crown. The authority is bound to keep them in repair, and to make such new sewers as may be necessary for the effectual drainage of their district (38 & 39 Vict. c. 55, ss. 13, 15). The owner or occupier of any premises *within* the district of a local authority has a right to empty his *drains* into the sewers of the authority for such district on giving the required notices and complying with the regulations (s. 21); or, in places where the *Public Health Acts Amendment Act*, 1890, has been ADOPTED or put in force, he may request the authority to make the connection between his drain and the sewer, and the authority is bound, upon the estimated cost being paid in advance, to execute all necessary works. In case the owner is dissatisfied with the estimate, he may, if it is *under* 50*l.*, apply to a court of summary jurisdiction to fix the amount to be paid (53 & 54 Vict. c. 59, s. 18 (ii.)). In districts where the sanitary provisions of the *Public Health Act*, 1907, have been APPLIED, the authority may require old drains to be laid open for examination before they are made to communicate with sewers (7 Edw. 7, c. 53, s. 38). They may also insist on the testing of drains reported to be defective (*ib.* s. 45); the filling up of cesspools, &c. (*ib.* s. 46); and the provision of sinks and drains (*ib.* s. 49).

Sewers vested in local authority.

It is an OFFENCE for any person to cause a drain to empty into a sewer without complying with the statutory provisions; and the authority may close any such communication and recover the expenses summarily from the person offending (38 & 39 Vict. c. 55, s. 21). As to what is a "sewer" within this section, cf. *Kinson Pottery Co. v. Poole* (d); and see the observations of *Alverstone*, C.J.,

Offence to connect with sewer without notice, &c.

(d) [1899] 2 Q. B. 41; 68 L. J. Q. B. 819; 47 W. R. 607; 81 L. T. 24; 63 J. P. 580.

and *Darling, J., in Leeds, &c., Dyers' Association v. Yorkshire (W. R.) Rivers Board* (e).

Penalty.

PENALTY.—FINE, not exceeding 20*l.*; and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111). The *expenses* will be recoverable as a *civil debt* (see p. 118).

Use of sewers by owners, &c., without the district.

The owner or occupier of any premises *without* the district of a local authority may cause any *sewer* or *drain* from such premises to communicate with any sewer of the authority on such terms as may be agreed, or, in case of a dispute, as may be settled (if the owner or occupier so elect) by a court of summary jurisdiction (P. H. Act, s. 22).

Owner must make drainage effectual.

The local authority must require the owner or occupier to make the drainage of every "house" (including in that term schools, factories, &c.) within their district effectual, and, if he fails to do so within a reasonable time, may do the work themselves, and *recover the expenses thereof in a summary manner from the owner* (*ib.* s. 23). The authority are the sole judges of what constitutes sufficient and proper drainage, and they may specify what materials shall be used; but they are bound themselves *to provide* a proper system of sewers. The expenses will be recoverable under the Summary Jurisdiction Acts as a "civil debt" (*ante*, p. 118).

Building house without proper drains.

It is an OFFENCE to cause any house to be newly erected, or to be rebuilt, in an *urban* district, unless and until proper drains have been constructed; *or* to construct any drain not reported by the surveyor to be effectual for the drainage of such house (P. H. Act, s. 25). The section does not apply to a *rural* district unless urban powers have been extended to it.

PENALTY.—FINE, not exceeding 50*l.*; and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111).

The authority have power to require a *separate* drain for *each* house (*Woodford U. D. C. v. Stark*) (f); but they can only require such a drain as is necessary for the effectual drainage of the *particular house*, *i.e.*, they must not have regard to the benefit of the

(e) (1906) 70 J. P. 480; 5 L. G. R. 72.

(f) (1902) 86 L. T. 685; 18 T. L. R. 439; 66 J. P. 536.

district generally in respect of a scheme for the ultimate disposal of the sewage (*Matthews v. Strachan*) (g).

Any person who, in an *urban* district, without the written consent of the authority, (a) causes a building to be newly erected *over any public sewer*, or (β) causes a vault, arch, or cellar to be constructed *under the carriage-way of any street*, commits an OFFENCE, and the authority may cause such building, arch, or cellar to be altered or pulled down, and may recover summarily from the offender as a "civil debt" (*ante*, p. 118) any expenses they may have incurred (*ib. s. 26*). A building placed in the ground without foundations is within the meaning of the section (cf. *Poplar Board v. Knight* (h); and see *Walker U. D. C. v. Wigham*) (i). The section does not apply to a *rural* district unless urban powers have been extended to it.

Erecting buildings without consent over sewers or under streets.

PENALTY.—FINE, not exceeding 5*l.*, and a further sum of 2*l.* for every day the offence is continued after written notice; and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111).

In districts which have ADOPTED Part III. of the Public Health Act, 1890, it is an OFFENCE against s. 16 of that Act for any person to throw or pass into any sewer or drain communicating therewith any matter which may interfere with the free flow of sewage or storm water, or by which the sewer or drain may be injured (53 & 54 Vict. c. 59).

Provisions of the PUBLIC HEALTH ACT, 1890.

PENALTY.—FINE, not exceeding 10*l.*, and a daily PENALTY not exceeding 1*l.*; and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111).

So, too, IN SUCH DISTRICTS, every person who turns into any sewer or drain any *chemical refuse*, or any *waste steam*, or any water or other *liquid* of a *higher temperature* than 110° Fahrenheit, which either alone, or in combination with the sewage, causes a *nuisance*, or is dangerous or *injurious to health*, commits an OFFENCE, and is liable to be prosecuted by the authority if he continues the discharge after *seven days' notice* (*ib. s. 17* (i.), (iii.)). For PENALTY see p. 816.

(g) [1901] 2 K. B. 540; 70 L. J. K. B. 806; 85 L. T. 68; 49 W. R. 651; 65 J. P. 789.

(h) (1859) 28 L. J. M. C. 37; E. B. & E. 408; 5 Jur. (N. S.) 196.

(i) (1901) 85 L. T. 579; 66 J. P. 51, 152.

PUBLIC
HEALTH
ACT, 1890—
contd.

PENALTY.—FINE, not exceeding 10*l.*, and a further fine not exceeding 5*l.* for every day the offence continues after conviction; and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111).

On the complaint on oath of an authorized officer of the local authority, a justice may by ORDER require the person having custody of the premises to admit such officer for the purpose of examining whether the provisions of the section have been contravened (*ib.* s. 17 (ii.)).

At the request of the owner or occupier of premises (where the Act of 1890 has been adopted or has been put in force) the authority must, on certain conditions, make communication with sewers or drains; and such owner or occupier, if dissatisfied with the surveyor's estimate of the cost, may apply to a court of summary jurisdiction to settle the amount, provided the estimate be less than 50*l.* (see *ante*, p. 813) (*ib.* s. 18).

(2) DISPOSAL OF SEWAGE.

Building
house without
proper sani-
tary accom-
modation.

No house may be built or rebuilt without proper sanitary accommodation, and an ashpit with proper doors (38 & 39 Vict. c. 55, s. 35). "Ashpit" includes any ash-tub or other receptacle for the deposit of ashes, faecal matter, or refuse (53 & 54 Vict. c. 59, s. 11). It is not, however, necessary, in case of several houses together, to have separate accommodation for each house if there is sufficient for them collectively (*Clutton Guardians v. Pointing*) (*k*). Anyone who builds or rebuilds a house without such accommodation is liable to a PENALTY not exceeding 20*l.*; and in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111).

The question whether an *alteration* of an existing building (otherwise than in one of the ways specifically mentioned in P. H. Act, s. 159, as amounting to the erection of a *new building*) does amount to such an erection is one of fact (*Redruth Brewery v. Redruth Council*) (*l*).

Authority
may execute
necessary
works.

If a house appears to be without such sufficient accommodation as above mentioned, the local authority must serve a notice upon the owner or occupier requiring him

(*k*) (1879) 4 Q. B. D. 340; 48 L. J. M. C. 137; 40 L. T. 844; 43 J. P. 686.

(*l*) (1905) 3 L. G. R. 130; 69 J. P. 78.

within a reasonable time to provide the same; and, in default of compliance, they may do the work themselves, and *recover the expenses in a summary manner from the owner* (38 & 39 Vict. c. 55, s. 36). They may, it seems, require a water-closet to be substituted for a privy if the latter is not sufficient (cf. *St. Luke's, Middlesex v. Lewis* (m); *Nicholl v. Epping U. D. C.* (n)); but cannot prescribe the particular kind of closet to be constructed, nor enforce a general scheme making the construction of closets compulsory throughout the whole or part of the district (*Wood v. Mayor, &c., of Widnes*) (o). But see *Agnew v. Manchester Corporation* (p), decided under certain local Acts; and *Smith v. Greenwood* (q); while, in districts to which the sanitary provisions of the *Public Health Act, 1907*, have been APPLIED ample powers are conferred on the local authority (7 Edw. 7, c. 53, ss. 39—41), *subject to appeal to a court of summary jurisdiction* (ib. s. 42).

It is an OFFENCE (after notice) for an owner or occupier to permit a house to be used as a factory or building (in which persons of *both sexes* are employed or intended to be employed at one time in any manufacture, trade, or business) without making provision for a sufficient number of water-closets, &c., for the separate use of each sex (38 & 39 Vict. c. 55, s. 38); but, in urban districts where the *Public Health Act, 1890*, has been ADOPTED, these provisions are superseded by s. 22 of the later Act, which enlarges the powers of the authorities; and see further as to Factories and Workshops, *ante*, p. 459. As to London, see 54 & 55 Vict. c. 76, s. 38, and as to the portions of a *coal mine* which are above ground, see 50 & 51 Vict. c. 58, s. 74.

PENALTY.—FINE, not exceeding 20*l.*, and a further FINE, not exceeding 2*l.*, for every day the offence continues; and, in default of *distress*, imprisonment, *without hard labour*, according to scale (p. 111).

Occupying
factory with-
out proper
sanitary
accommoda-
tion.

(m) (1862) 1 B. & S. 865; 31 L. J. M. C. 33; 5 L. T. N. S. 608; 10 W. R. 120.

(n) [1899] 1 Ch. 844; 68 L. J. Ch. 293.

(o) [1898] 1 Q. B. 463; 67 L. J. Q. B. 254; 77 L. T. 779; 46 W. R. 293; 62 J. P. 117.

(p) (1903) 67 J. P. 174; 1 L. G. R. 9.

(q) [1907] 2 K. B. 385; 71 J. P. 353; 96 L. T. 730; 5 L. G. R. 660.

As to proceedings under s. 22 of the Act of 1890, see *Tracey v. Pretty (r)*.

Erecting
sanitary con-
veniences
without
consent of
authority.
PUBLIC
HEALTH ACT,
1890.

Any urban authority may provide *public* sanitary conveniences (38 & 39 Vict. c. 55, s. 39); while in urban districts where *Part III. of the Public Health Act, 1890, has been ADOPTED*, no such conveniences may be erected in or accessible from any street *without the consent of the authority*; and any person who so erects any such convenience, and after notice does not remove the same, commits an offence (53 & 54 Vict. c. 59, s. 20).

PENALTY.—FINE, not exceeding 5*l.*, and a daily PENALTY not exceeding 1*l.*, recoverable as above.

If the authority provides the conveniences, such authority may make *regulations* as to their management, and *bye-laws* as to the decent conduct of persons using them (see *ante*, pp. 349—353).

Injuring
sanitary con-
veniences used
in common.
PUBLIC
HEALTH
ACTS, 1890,
1907.

Any person who injures or improperly fouls a sanitary convenience (*erected in any district where the Act of 1890 has been ADOPTED*) which is used in common by the occupiers of two or more separate dwelling-houses, or by other persons, is liable to a PENALTY not exceeding 10*s.*; and where such a convenience is in such a condition as to be a *nuisance* (in the opinion of the authority, the inspector of nuisances, or the medical officer), the persons having the use thereof (or such of them as are proved in fault if it can be shown on whom blame should rest) are liable to a PENALTY not exceeding 10*s.*, and a further daily PENALTY of 5*s.* during the continuance of default in cleansing the same (53 & 54 Vict. c. 59, s. 21).

Where the sanitary provisions of the *Public Health Act, 1907*, have been APPLIED to a district, the authority may (under penalties) require all inns, beerhouses, refreshment rooms and places of public entertainment to be provided with proper urinals, and may require any objectionable urinal opening on a street to be removed (7 Edw. 7, c. 53, ss. 43, 44).

Examination
of drains,
privies, &c.,
on complaint
of nuisance
arising there-
from.

Any person may complain in writing to a local authority that any drain, water-closet, &c., on premises within their district is a nuisance or injurious to health, and the authority may by writing empower their surveyor,

(r) [1901] 1 K. B. 444; 70 L. J. K. B. 234; 65 J. P. 196.

after twenty-four hours' notice to the occupier, or in case of emergency without notice, to enter and examine the same. They must, if necessary, forthwith serve a notice on the owner or occupier requiring him to remedy the defect, and may, if such notice is not complied with, do the work themselves, and *recover the expenses in a summary manner (i.e., as a "civil debt," ante, p. 118) from the owner* (38 & 39 Vict. c. 55, s. 41). For non-compliance with the notice the owner or occupier is liable to a PENALTY not exceeding 10s. for every day of default. The giving of the twenty-four hours' notice to the *occupier* is not, it seems, a condition precedent to the recovery of the expenses from the *owner* (*Bromley v. Cheshire*) (rr).

Where the sanitary provisions of the *Public Health Act*, 1907, have been APPLIED, the section last cited may be put in operation "on the report in writing of the *surveyor* or *inspector of nuisances*" of the authority (7 Edw. 7, c. 53, s. 34).

Where two or more houses belonging to *different* owners, situate in any district *where the Public Health Act*, 1890, *has been* ADOPTED, are connected with the public sewer by a *single private drain*, an application may be made under 38 & 39 Vict. c. 55, s. 41 (*supra*); and the authority may recover the expenses of executing any necessary works from the owners in such proportion as shall be settled by their surveyor, or in case of dispute, by a court of summary jurisdiction (*Public Health Act*, 1890, s. 19).

Apportionment in certain cases. PUBLIC HEALTH ACT, 1890.

"Single private drain."

A *joint* notice to repair may be given to the owners and the expenses *apportioned* among those responsible for the defect (*Lancaster v. Barnes D. C.*) (s). But, if it be found that the defects may be remedied by works executed on the premises of *one* of the owners only, he alone may be served with notice. The *apportionment* of expenses is only applicable where a defect is found to exist on the premises of more than one owner (*Thompson v. Eccles Corporation*) (t). Under the Act of 1875, such a "single private drain" would, of course, be a "sewer" for all purposes,

(rr) [1908] 1 K. B. 680; 77 L. J. K. B. 332; 98 L. T. 243; 72 J. P. 34.

(s) [1898] 1 Q. B. 855; 62 J. P. 405.

(t) [1905] 1 K. B. 110; 74 L. J. K. B. 130; 91 L. T. 750; 53 W. R. 211; 69 J. P. 45.

"Single
private
drain"—
contd.

vested in and under the control of the local authority themselves (*Bradford v. Mayor, &c., of Eastbourne*) (u). The words "private drain" would seem to refer to a drain running in private land into which there is no power to drain other houses through the private land (per *Care, J.* in *Seal v. Merthyr Tydfil*) (x). If a pipe convey the drainage of several houses belonging to one owner, it is a public sewer, and it does not cease to be so and become a *single private drain* because the sewage from it passes on its way to the main sewer, through a pipe conveying the drainage from houses belonging to different owners, such last-mentioned pipe being itself a single private drain (*Jackson v. Wimbledon U. D. C.*) (y); and see *Wood Green U. D. C. v. Joseph* (z).

(3) SCAVENGING AND CLEANSING.

Removal of
house refuse.

Every local authority may, and when required by the Local Government Board *must*, undertake or contract for the removal of *house refuse* and the cleansing of *earth closets, privies, ashpits and cesspools*. The authority may, however, undertake or contract for the cleansing of some one or more of these places, and not of the others (*Stainland Industrial, &c., Society v. Stainland U. D. C.*) (a). Urban authorities, and also rural authorities when invested with the requisite powers, may, and, if required by the Local Government Board, *must*, also cleanse the *streets* in their district.

Cleansing of
streets.

If any person obstructs the authority or contractor whilst performing these duties, or wrongfully removes the refuse himself, he commits an OFFENCE (38 & 39 Viet. c. 55, s. 42). Cf. also *ante*, p. 809.

PENALTY.—FINE, not exceeding 5*l.*; and, in default of distress, imprisonment, *without* hard labour, according to scale (p. 111).

As to what amounts to such an *obstruction*, cf. *Barrow v. Howland* (b).

(u) [1896] 2 Q. B. 205; 74 L. T. 762; 60 J. P. 501.

(x) [1897] 2 Q. B. 543; 67 L. J. Q. B. 37; 77 L. T. 303; 61 J. P. 551.

(y) [1905] 2 K. B. 27; 74 L. J. K. B. 641; 69 J. P. 225.

(z) [1908] A. C. 419; 77 L. J. K. B. 924; 99 L. T. 733; 6 L. G. R. 980; 24 T. L. R. 850; 72 J. P. 393.

(a) [1906] 1 K. B. 233; 70 J. P. 150.

(b) (1896) 74 L. T. 787; 60 J. P. 391.

The authorities are only obliged to remove such refuse as is or might become injurious to health (*Collins v. Paddington Vestry*) (c); but the word "cleansing," as applied to privies, &c., is wide, and includes the removal of all matter which might cause a nuisance (*Barnett v. Laskey*) (d).

And it is the duty of those who create refuse by carrying on any business for their own profit to pay for its removal. Thus, clinkers produced by the furnace of a steam laundry are not "house" refuse which the authority would be bound to remove; the definition of "house" in s. 4 is not to be imported into the phrase "house refuse" (*London and Provincial Laundry v. Willesden Local Board*) (e). Under the Metropolitan Acts it has been held to be a question of *fact* for the magistrate to determine what amounts to "trade refuse" (*Westminster City Council v. Gordon's Hotels, Ltd.*) (f); but, if the stuff is "house refuse" in fact, it is not to be deemed "trade refuse" merely because it has been produced in the course of carrying on a trade, as where ashes, eggshells, broken crockery, &c., constituted the refuse of a lock-up tea-shop (*Lyons & Co., Ltd. v. City of London*) (g). And in districts to which the sanitary provisions of the *Public Health Act, 1907*, have been APPLIED, the authority must remove *trade* refuse (other than sludge) at the expense of the owner or occupier. Any dispute arising as to the amount to be paid is to be settled by summary ORDER; while if there arises any question as to what is to be considered "trade refuse," the question is to be determined by a court of summary jurisdiction "*whose decision shall be final*" (7 Edw. 7, c. 53, s. 48).

In cases where the authorities do not undertake the duty of cleansing footways and pavements adjoining premises, the removal of house refuse, the cleansing of ashpits, &c., they may make BYE-LAWS imposing the duty on the occupier of the premises; also, in urban districts, BYE-LAWS for the prevention of nuisances arising from snow, filth, dust, ashes and rubbish, and as to the

"House refuse."

"Trade refuse."

Authority may impose duty of removal on occupiers, and make bye-laws.

(c) (1879) 40 L. T. 843; 43 J. P. 367.

(d) Cited *post*, p. 832.

(e) [1892] 2 Q. B. 271; 67 L. T. 499; 40 W. R. 557; 56 J. P. 696.

(f) [1908] A. C. 142; 77 L. J. K. B. 520; 98 L. T. 681; 72 J. P. 201; 6 L. G. R. 520; 24 T. L. R. 402.

(g) [1909] 2 K. B. 588; 78 L. J. K. B. 915; 25 T. L. R. 636; 73 J. P. 373; 7 L. G. R. 811; 101 L. T. 206.

keeping of animals so as to be injurious to health (38 & 39 Vict. c. 55, s. 44); while these powers have been further extended in districts to which the Public Health Act, 1890, applies (s. 26). Where the bye-laws are infringed the penalties thereby imposed are recoverable in a summary manner (and see *ante*, pp. 349 *et seq.*).

Non-compliance with notice to whitewash or purify house.

It is an OFFENCE not to comply with a *notice* of the local authority to *whitewash*, *cleanse* or *purify* any house which, in the opinion of the officer of health or any two medical practitioners, is in such a filthy and unwholesome condition as to be dangerous to health, or where the whitewashing, &c., would tend to check or prevent infectious disease. It is the duty of the authority to compel this work to be done by the owner or occupier; or to do the work themselves, in which case the expenses may be recovered summarily as a "civil debt" (*ante*, p. 118) from the person in default (38 & 39 Vict. c. 55, s. 46).

PENALTY.—FINE, not exceeding 10s. for every day of default, recoverable as above.

Nuisances on premises in urban districts.

It is an OFFENCE in any *urban* district—

- (a) To keep any swine or pigsty in a dwelling-house or so as to be a nuisance to any person.
- (b) To suffer any waste or stagnant water to remain in a cellar or other place within a dwelling-house for twenty-four hours after notice to remove it.
- (c) To allow the contents of any closet, privy, or cesspool to overflow (*ib.* s. 47).

The authority may be called upon to cause the abatement of such a nuisance; and may recover from the occupier as a "civil debt" (*ante*, p. 118) the expenses of themselves abating it. It is not necessary to prove that these offences are injurious to health: it is sufficient to establish that there is in fact a nuisance in the ordinary legal sense (*Banbury Authority v. Page*) (*q*).

PENALTY.—FINE, not exceeding 2l., and a further daily penalty of 5s., and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111).

(4) COLLECTION OF OFFENSIVE MATTER.

Removal of manure, &c., in urban districts.

In any *urban* district the authority may *recover summarily the expenses of removing any accumulation of manure*

(*g*) (1882) 8 Q. B. D. 97; 45 L. T. 759; 51 L. J. M. C. 21.

or other offensive matter, if the owner neglects to remove the same within twenty-four hours after notice from the inspector of nuisances.

Removal of
manure, &c.
—*contd.*

The manure, &c., must be sold, and any balance due for expenses may be recovered (as a "civil debt" before a court of summary jurisdiction) from the owner of the accumulation or from the occupier of the premises, or from the owner of the premises if there be no occupier (38 & 39 Vict. c. 55, s. 49).

The urban authority may, by public announcement or otherwise, require the *periodical removal* of manure and other refuse matter from stables or other places, and, if the owner of such manure or refuse matter does not comply with the terms of the notice, he commits an offence (*ib.* s. 50). And see NUISANCES, *post*, p. 831.

PENALTY.—FINE not exceeding 1*l.* for each day the manure, &c., is allowed to accumulate, recoverable by distress as above.

(5) WATER SUPPLY.

Sects. 51—70 of the Public Health Act, 1875 (which incorporate certain portions of the Waterworks Clauses Acts, 1847 and 1863), together with the Public Health (Water) Act, 1878, determine the duties and liabilities of local authorities. It may be stated generally, that under the Public Health (Water) Act, 1878, *rural* authorities are compelled to see that every occupied dwelling-house within their district has, within a reasonable distance, a supply of wholesome water sufficient for the domestic use of the inmates, and that the Local Government Board may also cast the like duty upon any *urban* authority. Where this duty is imposed, the authority may require the owner to bring such supply within a reasonable distance, and on his default, may themselves provide the supply, and recover the expenses (if within the limitation prescribed) by ORDER of a court of summary jurisdiction (41 & 42 Vict. c. 25, ss. 3, 4; *West Lancashire R. D. C. v. Ogilvy*) (*h*).

Duty of rural
authority to
require
supply of
water.

As to urban
authority.
Authority
may require
supply to be
brought
within reason-
able distance,
and, on
default, may
do work
themselves.

Where the owners of two or more houses have rendered themselves liable for such expenses, and one of such

(*h*) [1899] 1 Q. B. 377; 68 L. J. Q. B. 215; 80 L. T. 162; 47 W. R. 363; and see 63 J. P. at p. 195.

Apportionment of expenses.

owners objects to the *apportionment* of the expenses by the local authority, he may, *within twenty-one days* after notice thereof, apply to a justice, who has power to summon the authority and the other owners before a court of summary jurisdiction, which may dismiss the application or make such ORDER varying the apportionment as may appear reasonable (*ib. s. 5*). Cf. also as to supply by *parish councils*, the Local Government Act, 1894, ss. 8, 16.

Power under Act of 1875 to compel owner to provide communication to house, where there is a supply within reasonable distance.

And *any* local authority may, under certain circumstances, require the owner of a house to provide a supply of water therefor, and on his default, may themselves execute the works of communication and recover the expenses from the owner in a summary manner as a "civil debt" (38 & 39 Vict. c. 55, s. 62). This section assumes that there is a water supply within reasonable distance of the house, and if the owner disputes this fact he must appeal to the Local Government Board (*West Lancashire R. D. C. v. Ogilvy*) (*i*).

The Court refused to interfere with the finding of justices that a particular building was not a "house," such finding being one of *fact* (*Wootton v. Bishop*) (*k*); *sed quære* whether it was not a fact *preliminary* to the exercise of jurisdiction (cf. *ante*, p. 26).

Water supplied by meter.

Where water is supplied by measure, the register of the meter is to be taken *primâ facie* as accurate; but, if a difference arises between the consumer and the authority as to the quantity of water consumed, a court of summary jurisdiction, on the application of either party, has power to determine the question, and may order by which party the costs are to be paid. From this decision there is no appeal (38 & 39 Vict. c. 55, s. 59). The *costs* would appear to be recoverable as a "civil debt" (*ante*, p. 118).

Power to close polluted wells.

On the representation of any person to *any* local authority that within their district the water in *any* well, tank, or cistern, or from any *public* pump, used or likely to be used by man for drinking, manufacturing drinks, or domestic purposes, is so polluted as to be injurious to health, such authority may apply to the court for an ORDER to remedy the mischief. If the well, tank, or cistern be *private*, the owner or occupier of the premises must

(*i*) Cited *supra*, p. 823.

(*k*) (1907) 96 L. T. 705; 71 J. P. 334.

thereupon be summoned; and, in the case of a *public* well, tank, cistern, or pump, the summons may issue to any person alleged to be interested therein. The Court may thereupon make an order for the well, &c., to be closed, either temporarily or permanently, or direct the water to be used for certain purposes only, or make *any* ORDER *requisite to prevent injury to health*. If the person summoned fails to comply with the order, the court may authorise the local authority to do what is necessary, and the expenses of so doing may be recovered from such person in a summary manner, as a "civil debt" (*ante*, p. 118) (38 & 39 Vict. c. 55, s. 70).

Authority may, if necessary, execute works.

The following are the principal OFFENCES relating to water, the penalties for which can be recovered summarily:—

1. An owner may not occupy, or permit any person to occupy, a house erected or rebuilt after March 25th, 1879, in any *rural* district until he has obtained a *certificate* from the authority that there is a proper water supply within a reasonable distance. If the authority refuse this certificate, he may apply to a court of summary jurisdiction for an ORDER authorizing the occupation; the court must then summon the authority, and, if of opinion that the certificate should have been granted, may make the order. But, if the owner permits occupation without such certificate or order, he incurs a

New houses in rural districts not to be occupied without proper water supply.

PENALTY of not exceeding 10*l.*; and in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111) (41 & 42 Vict. c. 25, s. 6).

2. By the Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), every person commits an OFFENCE who—

(a) Removes any water-pipe laid by an owner or occupier, and connected with the pipes of a local authority, without giving *six days'* notice in writing (s. 51).

Notice must be given before removing water pipe.

(b) Allows a cistern, pipe, ball or stopcock to be out of repair so as to cause waste of the water supplied to him (s. 55).

Fittings must be kept in repair.

(c) Being an owner or occupier supplied with water, supplies water to any other person or wilfully permits the water to be taken by such person, unless it be to extinguish a fire or unless the person be one

Supplying water without authority.

whose service pipes are (without his default) out of repair (s. 58).

Injuring fittings.

(d) Wilfully or carelessly damages the pipes or other fittings (s. 60).

Wasting water.

(e) Wilfully does any act whereby the water from the reservoirs or other works may be wasted (s. 60).

Fouling water.

(f) Bathes, or washes dogs or other animals, in any reservoir or waterworks, or throws rubbish therein, or washes clothes or other thing therein, or causes dirty water to run into any stream, reservoir, or other waterworks (s. 61).

PENALTY.—FINE, not exceeding 5*l.*; and, in default of distress, imprisonment, *without* hard labour, according to scale (p. 111); and as to offence (f), a further PENALTY of 1*l.* per day for each day (if more than one) the offence continues.

Taking water without agreement.

3. Every person commits an OFFENCE who takes water from any reservoir, conduit, &c., belonging to a local authority where no supply has been agreed for, unless such water has been provided for the gratuitous use of the public (10 & 11 Vict. c. 17, s. 59). And the water may only be taken for the purpose for which it is gratuitously supplied (*e.g.* for drinking purposes), otherwise an offence would be committed.

It has been held that taking water from a tap in an unoccupied house, and, therefore, at a time when it is not under the direct control of the undertakers, is not within this section (*Piercy v. Pope*) (l). As to *stealing* water, see p. 514.

PENALTY.—FINE, not exceeding 10*l.*; and in default of distress, imprisonment, *without* hard labour, according to scale (p. 111).

Using water for unauthorized purpose.

4. If any person uses water for any unauthorized purpose, as, *e.g.*, if, having agreed to take water for *domestic purposes*, he uses it for other purposes, he is liable to a PENALTY not exceeding 2*l.*, recoverable as above (26 & 27 Vict. c. 93, s. 18).

Meaning of domestic purposes.

Proceedings may be instituted against a *ratepayer* by a *company*, who have taken over the mains, &c., of a district council under an agreement to supply water to the district (*Andrews v. Wills*) (m). A supply for *domestic*

(l) (1882) 45 L. T. 477; 46 J. P. 103; 30 W. R. 60.

(m) (1901) 84 L. T. 124; 65 J. P. 281.

purposes does not include a supply for *cattle*, nor for horses, nor for washing carriages (where such *horses or carriages are kept for sale or hire*, or by a common carrier) nor a supply for any *trade, manufacture, or business*, nor for watering *gardens*, nor for fountains, nor for *any ornamental purpose* (*ib.* s. 12). A supply for a swimming bath, erected and used for the purposes of the “business” of a school, is not a supply for “domestic purposes” (*Barnard Castle U. D. C. v. Wilson*) (*n*). But such a supply does include water for washing a motor car used by a medical man in the practice of his profession (*Harrogate Corporation v. Mackay*) (*o*). And, where guardians of the poor occupied a building used as a school for the maintenance and education of the children of the paupers in the workhouse, it was held that the guardians carried on a “business” at the school, but that water used for the purposes of the school was not necessarily *all* used for a “business” within the meaning of s. 12 (*supra*) (*South-West Suburban Water Co. v. St. Marylebone Guardians*) (*p*).

5. Any person who, wilfully or by culpable neglect, injures any meter or other fittings of a local authority, or fraudulently alters the index or prevents the meter from registering properly, or *fraudulently* abstracts or uses the water, is guilty of an offence (38 & 39 Vict. c. 55, s. 60). The existence of artificial means, under the control of the consumer, for causing any such alteration, use, &c., is *primâ facie* evidence that the consumer has *fraudulently* effected the same (*ib.*). As to *stealing* water, see p. 514.

This section is analogous to ss. 58 and 60 of the Waterworks Clauses Act, 1847 (*ante*, pp. 825, 826), and to 26 & 27 Vict. c. 93, s. 20; but while imposing a less penalty, it empowers the authority to recover the amount of the damage sustained in addition to the penalty, and expressly provides that the proceedings shall be without prejudice to any other remedy of the authority.

PENALTY.—FINE, not exceeding 2*l.*, recoverable as above, together with the amount of the damage sustained, which may apparently be recovered summarily as a “civil debt” (*ante*, p. 118).

(*n*) [1902] 2 Ch. 746; 51 W. R. 102.

(*o*) [1907] 2 K. B. 611; 76 L. J. K. B. 977; 71 J. P. 458.

(*p*) [1904] 2 K. B. 174; 73 L. J. K. B. 347; 68 J. P. 257.

Injuring
meter or
fittings, or
fraudulently
altering meter
or using
water.

Arrears of Water Rates.

Recovery of
WATER
RATES.

ARREARS of water rates, if under 20*l.*, may be recovered, with the costs of cutting off the supply, in a court of summary jurisdiction from "any person supplied with water" (10 & 11 Vict. c. 17, s. 74). As to water supplied by meter, see *ante*, p. 824.

When the water rate is in arrear the supply may be cut off (*ib.*) ; though in the case of a trading water company (as distinguished, apparently, from a local authority supplying their own district), it is an offence subject to a daily penalty of 5*l.* to cut off the supply where the owner is liable for the rate (50 & 51 Vict. c. 21, ss. 4, 5 ; see *infra*). The penalty goes to the "person aggrieved."

And, in any case, there is no obligation to cut off the supply as a condition precedent to the right to recover arrears (*R. v. Hutton, Ex parte Metropolitan Water Board*) (*q*).

The water rates are payable in advance, according to the annual value of the tenement supplied, and if any dispute arises as to such value it must be determined by two justices (10 & 11 Vict. c. 17, s. 68). On the summons for payment of arrears, the justices have, however, jurisdiction to determine any dispute as to value (*Lea v. Abercavenny Improvement Commissioners*) (*r*). Where the annual value of a dwelling-house (or part of it occupied as a separate tenement) does not exceed 10*l.*, the owner is liable for water rates (*ib.* s. 72).

Under the Waterworks Clauses Acts the determination by the justices of the sum to be paid amounts to an order for the payment of the sum. Moreover, the proceedings constitute a complaint within the Summary Jurisdiction Act, 1848, and the order is an order for the payment of money recoverable as a civil debt (*ante*, p. 118). Complaint must, therefore, be made *within six months* from the time the rates became due and were demanded (*East London Waterworks Co. v. Charles*) (*s*). If the amount found to be due is not paid *within seven days after demand*,

(*q*) (1907) 2 K. B. 578 ; 71 J. P. 424 ; 76 L. J. K. B. 1001.

(*r*) (1885) 16 Q. B. D. 18 ; 55 L. J. M. C. 25 ; 34 W. R. 105 ; 50 J. P. 165.

(*s*) [1894] 2 Q. B. 730 ; 63 L. J. M. C. 209 ; 71 L. T. 200 ; 58 J. P. 764 ; 42 W. R. 732.

a warrant of distress may issue (8 Vict. c. 20, s. 140). It was held that, *under the Waterworks Clauses Acts*, a demand is not a *condition precedent* to the issue of a summons for this rate (*East London Water Co. v. Kyffin*) (t). But it is clear that, if the proceedings are instituted by a local authority acting under the Public Health Act, 1875, and a demand is in fact made, the matter of complaint arises *at the date of the demand*, and the summons may be taken out within six months from that date (*Elliott v. Russell*) (u). Indeed, this case seems to decide that, where the arrears are due by virtue of an agreement for the supply of water under s. 56 of the Public Health Act, 1875, the water rate is "made under" that Act and must, therefore, be recovered under s. 256, so that a *fourteen days'* notice of demand would be *necessary* (see *ante*, p. 805).

Recovery of
WATER
RATES—
contd.

(6) OCCUPATION OF CELLAR DWELLINGS AND COMMON LODGING-HOUSES.

No cellar (including any vault or underground room) may be let or occupied *separately as a dwelling*; and any person, whether landlord or tenant, who lets or occupies such cellar for hire is guilty of an OFFENCE. It is a sufficient occupation if any person passes the night therein (38 & 39 Vict. c. 55, ss. 71, 74). As to the conditions of occupation of cellars in existence in 1875, see s. 72.

Cellars not to
be occupied as
dwellings.

PENALTY—FINE, not exceeding 1*l.* (on any person who lets, or occupies, the cellar, or who knowingly suffers it to be occupied for hire or rent), for every day the offence is continued after notice in writing from the authority; and, in default of *distress*, imprisonment *without* hard labour, according to scale (p. 111).

The justices may make an order for the temporary closing of the premises (or may empower the local authority to close them permanently) where *two convictions* relating to the same premises have taken place *within three months*, whether the persons convicted were the same or not (*ib.* s. 75; and see 9 Edw. 7, c. 44, s. 17 (vii.), *post*, p. 834).

(t) [1895] 1 Q. B. 55; 64 L. J. M. C. 32.

(u) [1902] 2 K. B. 748; 72 L. J. K. B. 15; 67 J. P. 158.

Registration
of common
lodging-
houses.

It is part of the duty of a local authority to make BYE-LAWS for the regulation, cleansing, and ventilation of all *common lodging-houses* (*ante*, pp. 393, 804), and to keep a *register* of all such houses within their district. The register must contain the situation of the house, the name of the keeper, and the number of lodgers to be accommodated. Before registration can be effected the house must have been inspected and approved by some officer of the authority (38 & 39 Vict. c. 55, ss. 76 *et seq.*). A copy of any *entry* in the register, *certified by the clerk* of the local authority as true, is sufficient proof of the matter registered without production of the register or of any document or thing on which the entry is founded.

It is an OFFENCE for the keeper—

Notice of
registration
to be kept
affixed.

(a) Not to affix or renew on the outside of such lodging-house (after being required to do so) a legible notice with the words “Registered Common Lodging-House” (38 & 39 Vict. c. 55, s. 79).

PENALTY.—FINE, not exceeding 5*l.*, and a daily penalty of 10*s.* after conviction; and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111).

Walls to be
linewashed
periodically.

(b) Not to linewash to the satisfaction of the authority the walls and ceilings in the first weeks of April and October of every year (*ib.* s. 82).

PENALTY.—FINE, not exceeding 2*l.*, recoverable as above.

Keeping un-
registered
lodging-
house.

(c) To keep, or receive any lodger in, such a house unless the same is registered in his name (but there is provision for “temporary” keeping in case of death); *or* to fail in making the requisite reports to the local authority; *or* to fail in giving the required notice when any inmate has been confined to his bed by any infectious disease (*ib.* ss. 77, 83, 84, 86).

Omission
of registered
keeper to
comply
with regula-
tions.

PENALTY.—FINE, not exceeding 5*l.*, and in the case of an offence continuing, a further daily penalty of 2*l.*, recoverable as above.

As to “Infectious Diseases,” see *post*, p. 844, and *ante*, p. 577.

Refusal of
access.

(d) Not to allow free access to officers of the local authority to all parts of the lodging-house (*ib.* s. 85).

PENALTY.—FINE, not exceeding 5*l.*, recoverable as above.

When the keeper of a common lodging-house is convicted of a *third* offence, the justices may order that he shall not (for a period not exceeding five years) keep a lodging-house without the previous licence of the authority, which may be withheld altogether or granted conditionally (*ib.* s. 88). Except under these circumstances the authority has no power to withhold a licence from a person producing the required certificate of good character, if the house is suitable and the provisions contained in the bye-laws have been complied with (*ib.* s. 78). But, as to the duty of an authority in reference to registration, see *Local Government Chronicle*, June 23rd, 1894 (at p. 545).

Effect of three convictions.

As to the meaning of "COMMON LODGING-HOUSE," see *ante*, p. 393; and 23 Vict. c. 26, s. 3, there cited.

In districts to which Part V. of the *Public Health Act*, 1907, has been APPLIED, the authority may, at their discretion, *refuse to register* a person as a common lodging-house keeper unless satisfied of his character and fitness (7 Edw. 7, c. 53, s. 69); and the court may *cancel* the registration on a *first* conviction (*ib.* s. 72); while the keeper of such a house (although unregistered) becomes liable to the penalties imposed by s. 86 of the Public Health Act, 1875. The Act of 1907 also imposes obligations as to the provision of proper control (ss. 70, 71) and of proper sanitary conveniences (s. 74).

PUBLIC
HEALTH ACT
1907.

(7) NUISANCES.

Local authorities are required to cause inspection to be made periodically to ascertain what nuisances exist in the district; but *any person aggrieved, any two inhabitant householders, an officer of the authority, a relieving officer, or a police officer*, may at any time give information to the authority as to any special nuisance coming to his or their notice (38 & 39 Vict. c. 55, s. 93). If a nuisance is wholly or partially caused by some act or default *without* the district, the local authority may proceed as though the act or default were committed or took place wholly within their district; but the proceedings must be taken before a court having jurisdiction where the act or default is alleged to be committed or take place (*ib.* s. 108).

Information
as to
nuisances.

If satisfied that the nuisance exists, the authority must serve a *notice* on the person offending, *or*, if such

Notice (to
abate
nuisance
(Public
Health Act,
s. 94).

person cannot be found, on the owner or occupier of the premises, requiring him to abate it within a specified time, and to execute all necessary works. In case, however, the nuisance arises from the want of or a defect in any *structural* convenience, or there is no occupier, the notice *must* be served on the *owner* (*ib.* s. 94). As to when the *owner* will be held to be liable, cf. *Kinson Co. v. Poole Corporation* (*x*). A person who collects the rents as agent may be served as "owner" in case of a nuisance arising from structural defects; and an order may be made against such an agent though he may have ceased to be agent before an adjourned hearing of the summons (*Broadbent v. Shepherd*) (*y*).

The notice to abate must be served by the authority before any further steps are taken; and the authority cannot succeed if no nuisance would exist but for their own default in some particular (cf. *Barnett v. Laskey* (*z*); *Fordham v. Parsons* (*a*); and see *Wincanton Rural District Council v. Parsons* (*b*)). But if the person causing the nuisance cannot be found, and it is clear that neither the owner nor the occupier is in any way responsible for it, the authority may themselves abate it without any order (s. 94).

Complaint in
event of non-
compliance.

If the person in default fails to comply with the notice to abate the nuisance within a specified time, or if the authority think the nuisance is likely to recur, the authority must make complaint to a justice, who must summon such person before a court of summary jurisdiction (s. 95).

Complaint to
justice with-
out notice to
abate.

Where complaint is made by the local authority, they must, as we have seen, give previously a notice to abate; but any person aggrieved, or any inhabitant or any owner of premises within the district, may make complaint to a justice directly and without such a notice (*ib.* s. 105) (*Cocker v. Cardwell*) (*c*).

Order of court
dealing with
the nuisance.

The court (if satisfied of the existence of the alleged

(*x*) [1899] 2 Q. B. 41; 81 L. T. 24; 47 W. R. 607.

(*y*) [1901] 2 K. B. 274; 70 L. J. K. B. 628; 49 W. R. 521; 65 J. P. 499.

(*z*) (1899) 68 L. J. Q. B. 55; 79 L. T. 408; 63 J. P. 5.

(*a*) [1894] 2 Q. B. 780; 64 L. J. M. C. 22; 71 L. T. 428; 58 J. P. 765.

(*b*) [1905] 2 K. B. 34; 74 L. J. K. B. 533; 93 L. T. 13; 69 J. P. 242.

(*c*) (1870) L. R. 5 Q. B. 15; 39 L. J. M. C. 28; 21 L. T. 457; 18 W. R. 212; 33 J. P. 758.

nuisance or that although abated it is likely to recur) must make an ORDER on the defendant requiring him to comply with *all or any* of the requisitions of the notice, or otherwise to abate the nuisance, and to do the works necessary for that purpose; or alternatively or in addition, it may prohibit the recurrence of the nuisance; and may, further, impose a penalty not exceeding 5*l.* The court must, too, give directions as to the payment of all costs incurred (*ib. s. 96*). An order *signed by one* only of the justices who heard the case was held to be invalid (*Wing v. Epsom Urban District Council*) (*d*).

Public Health
Act—*contd.*

The order must specify the nature of the works (*if any*) to be executed, and it would seem that the justices have power to determine what works are necessary. In the case of *R. v. Wheatley* (*e*), an order was quashed on the ground that it did not *specify* what works were to be executed. Where, however, an order failed to specify the works, so much of it as prohibited the *recurrence* of the nuisance was upheld inasmuch as the recurrence could be prevented by the mere refraining from doing an act (*R. v. Horrocks*) (*f*).

It seems to be now established (although there are some earlier authorities to the contrary both in the case of proceedings against an owner for not doing works which the authority had ordered, and also in the case of proceedings for the recovery of expenses incurred by the authority through his default) that *the authority* should indicate the nature of the works required to be executed, but that it is for *the justices* to determine what works are necessary, and to *specify* them in the order. If, however, the abatement does not necessarily involve the execution of works, as, *e.g.*, when a nuisance is caused by the emission of black smoke from a factory chimney, the notice need not specify the works to be executed, as the requirement is, not that works shall be done, but that the black smoke shall be stopped (*Millard v. Westall*) (*g*).

Where the nuisance renders a house or building unfit

Houses unfit
for human
habitation.

(*d*) [1904] 1 K. B. 798; 73 L. J. K. B. 389; 90 L. T. 543; 52 W. R. 461; 68 J. P. 259.

(*e*) (1886) 16 Q. B. D. 34; 55 L. J. M. C. 11; 50 J. P. 424.

(*f*) (1900) 69 L. J. Q. B. 688; 82 L. T. 767; 19 Cox, 529; 64 J. P. 661.

(*g*) [1898] 1 Q. B. 342; 67 L. J. Q. B. 277; 77 L. T. 692; 46 W. R. 258; 62 J. P. 135.

Houses unfit
for human
habitation
—*contd.*

for human habitation, the court may, by ORDER, prohibit its use for that purpose until it is rendered fit, when the order may be determined (s. 97; and see *post*, p. 836).

Where, under the *Housing, Town Planning, &c., Act*, 1909, a "closing order" has become operative, the local authority must serve notice of it on every occupying tenant of the dwelling-house, specifying a time (not less than 14 days after service) within which the order must be obeyed and the tenant and his family cease to inhabit the house. In default, the tenant is "liable on *summary conviction* to be ordered (*sic*) to quit the dwelling-house within such time as may be specified in the order" (9 Edw. 7, c. 44, s. 17 (iv.); cf. *ante*, p. 120). On and after 1st July, 1910, a closing order may, in certain circumstances, be made in respect of a "room habitually used as a sleeping place," the floor of which is *more than three feet below the surface of the street*. If, after notice of the order has been served upon him, the occupier uses the room as a sleeping place, "an order to comply therewith may, on *summary conviction*, be made against him" (*ib.* s. 17 (vii.)). Section 47 (iii.) of 53 & 54 Vict. c. 70, no longer has effect "as respects" the time which a court of summary jurisdiction may allow for the execution of works or the demolition of a building under an order (*ib.* s. 21).

Penalty for
contravention
of order of
court.

AN APPEAL to quarter sessions operates to stay proceedings (Public Health Act, s. 99): but, if no notice of appeal is given and the order of the court requiring the abatement of a nuisance is disobeyed, the person in default will be liable to a daily PENALTY of 10s., unless he satisfy the court that he has used all due diligence to carry out the order; and any one who wilfully contravenes an order prohibiting the recurrence of a nuisance is liable to a daily PENALTY of 1*l.* during such contravention. Moreover, the authority may enter and abate the nuisance and do the necessary works, and recover the *expenses* in a summary manner as a "civil debt" (*ante*, p. 118) from the person upon whom the order was made (*ib.* s. 98).

Order of jus-
tice in case
of refusal to
admit to
premises.

Should admission be refused to any premises on which a nuisance exists, or in respect of which an order of prohibition or abatement has been made, any justice, on *complaint on oath* by any officer of the local authority (made after reasonable notice in writing to the persons

having custody of the premises) may make an ORDER for admission to the premises between the hours of 9 a.m. and 6 p.m., or, in case of a nuisance arising in respect of any business, during business hours; and, if no person having custody of the premises can be found, the justice, on oath made before him of that fact, must, by ORDER, authorize the local authority or any of their officers to enter. The order continues in force until the nuisance has been abated or the work for which the entry was necessary has been done. Any person refusing to obey such an order is liable to a PENALTY of 5*l.* (Public Health Act, ss. 102, 103; cf. *Consett Urban District Council v. Crawford*) (*h*).

Costs and expenses incurred in making complaints, giving notice, or obtaining an order may be recovered, to the extent of one year's rack rent (apparently as a "civil debt," *ante*, p. 118), from the person on whom the order is made; or if the order is made on the local authority, or if no order is made, then from the person by whose act or default the nuisance was caused. Any sum due from an owner may (to the extent of rent due or paid after notice) be recovered from the occupier in the first instance (s. 104).

Where a nuisance has been caused by a *local authority* acting under statutory powers, as, *e.g.*, in the erection of sewage tanks, or other works under 38 & 39 Vict. c. 55, s. 27, the court has no power to make an order for abatement under the preceding provisions relating to summary proceedings (*R. v. Parlbby*) (*i*).

Proceedings were formerly taken under the Nuisances Removal Act (18 & 19 Vict. c. 121), but now under the Public Health Acts. It seems that under the former statute the justices had jurisdiction over such nuisances only as were *injurious to health* (*Great Western Railway Co. v. Bishop*) (*k*), while under the later statutes it is enough to prove substantial personal discomfort and annoyance.

The following are some of the nuisances for the continuance of which PENALTIES are recoverable by a local authority after notice to abate, or by a private individual without such notice (38 & 39 Vict. c. 55, s. 91)—

(a) Premises in such a state as to be a nuisance or

(*h*) Cited *ante*, p. 809.

(*i*) (1889) 22 Q. B. D. 520; 58 L. J. M. C. 49; 60 L. T. 422.

(*k*) (1872) L. R. 7 Q. B. 550; 41 L. J. M. C. 120; 26 L. T. 905.

Recovery of expenses of execution of provisions as to nuisances.

No order against authority acting under statutory powers.

Not necessary to prove nuisance to be injurious to health.

Examples of nuisances.

Examples of
nuisances
—*contd.*

injurious to health. As we have seen (*ante*, p. 834), where a house is unfit for habitation the court may by *order* prohibit its use: cf. also the Housing of the Working Classes Acts, 1890 to 1903, relating to the closing of unhealthy dwelling-houses, &c., and the Housing, Town Planning, &c., Act, 1909 (9 Edw. 7, c. 44).

- (b) Any pool, ditch, privy, gutter, watercourse, urinal, cesspool, drain or ashpit so foul as to be a nuisance *or* injurious to health.
- (c) Animals so kept as to be a nuisance *or* injurious to health; and see, too, *ante*, p. 822.
- (d) Accumulations or deposits which are a nuisance *or* injurious to health (see as to an accumulation of cinders not actually injurious to health, *Bishop Auckland Local Board v. Bishop Auckland Coal Co.*) (*l*). This would not include accumulations or deposits necessary for the conduct of a business, if not kept longer than necessary, provided the best available means have been adopted to prevent injury to the public health.
- (e) Any house or part of a house overcrowded to such an extent as to be dangerous *or* injurious to the health of the inmates. The word "house" here includes a day school where there are no boarders and where none of the members of the staff reside (*Wimbledon U. D. C. v. Hastings*) (*m*).
- (f) Factory, workshop, or workplace in an uncleanly, ill-ventilated, or overcrowded state. So far as *workshops, &c.*, are concerned, the section is specifically applied and extended in its operation by 1 Edw. 7, c. 22, s. 2 (cf. *Factories*, *ante*, p. 459).
- (g) *Any fireplace or furnace* which does not as far as practicable *consume its own smoke*, if such fireplace or furnace is used for working engines by steam, or in any manufacturing or trade process whatsoever. This would not apply if the fireplace or furnace were constructed so as to consume smoke as far as practicable, and had been carefully attended to by the person in charge.

Smoke nuisances.

(*l*) (1883) 10 Q. B. D. 138; 52 L. J. M. C. 38; 48 L. T. 223; 47 J. P. 389.

(*m*) (1902) 87 L. T. 118; 67 J. P. 45.

(h) *Any chimney* sending forth black smoke so as to create a nuisance (whether or not injurious to health), if such chimney is not the chimney of a *private dwelling-house*. These words would embrace the funnel of a steam tug (*Tough v. Hopkins*) (n); and also the chimney connected with the furnace heating the kitchen ranges and boiler in a club house (*McNair v. Baker*) (o).

Smoke nuisances—*contd.*

An occupier may, under certain circumstances, be liable for sending forth black smoke from a chimney, although his servant was the person who actually caused it to issue (*Barnes v. Ackroyd*) (p); and, where the chimney of the respondent's mill sent forth black smoke for more than ten minutes so as to be a nuisance and this was caused solely by the negligence of his stoker, it was held that the respondent (the occupier) ought, nevertheless, to have been held liable in respect of the commission of the nuisance (*Niven v. Greaves*) (q).

If a nuisance arising from smoke can be prevented without obstructing the efficient working of the mine, coal mines, iron works, &c., are not exempt, notwithstanding 38 & 39 Vict. c. 55, s. 334 (*Patterson v. Chamber Colliery Co.*) (r).

As to nuisances arising from cisterns, gutters, spouts, and deposits causing dampness in districts where the sanitary provisions of the Public Health Act, 1907, have been APPLIED, see 7 Edw. 7, c. 53, s. 35.

Public Health Act, 1907.

(8) OFFENSIVE TRADES.

It is an offence to *establish* any noxious or offensive trade within the district of any *urban authority* without their consent in writing (38 & 39 Vict. c. 55, s. 112).

Under this section it is an offence to *establish*, without consent, in any *urban* district the trade of

(a) Blood, bone, soap, or tripe boiling.

Noxious trades not to be established without consent of authority.

(n) [1904] 1 K. B. 804; 73 L. J. K. B. 628; 90 L. T. 672; 68 J. P. 274.

(o) [1904] 1 K. B. 208; 73 L. J. K. B. 120; 90 L. T. 24; 68 J. P. 66.

(p) (1872) L. R. 7 Q. B. 474; 41 L. J. M. C. 110.

(q) (1890) 54 J. P. 548.

(r) (1892) 56 J. P. 200; 8 T. L. R. 278.

(b) Fellmongering or tallow-melting.

(c) Any other noxious or offensive trade.

Penalty.

PENALTY.—FINE, not exceeding 50*l.*, for establishing; and a daily PENALTY not exceeding 2*l.* per day during continuance, whether there has or has not been any conviction in respect of “establishing.” The fines are recoverable by *distress*; and, in default, imprisonment, *without* hard labour, according to scale (p. 111).

The substances dealt with in the trades specified in the section are such as must be or must become a nuisance without anything being done to them (*Wansted Local Board v. Hill*) (s); and, thus, brick-making and fish-frying have been held not to be within this section of the Act. The justices must find as a fact that the trade is *per se* offensive (*Braintree Board v. Boyton*) (t).

But where s. 51 of the Public Health Acts Amendment Act, 1907, has been APPLIED, the prohibition would now extend to “*any trade, business, or manufacture, which the local authority declare, by order confirmed by the Local Government Board, and published in such manner as the Board direct, to be an offensive trade*” (7 Edw. 7, c. 53, s. 51).

The owner of works carried on for his benefit by his agent may become liable for that which is done without his consent and against his orders (*R. v. Stephens*) (u).

Urban
authority to
make com-
plaint if nui-
sance arises.

When any such offensive business, or other trade, business, process or manufacture, causing effluvia, is being carried on so as to be *a nuisance or injurious to the health* of any of the inhabitants, it is the duty of an urban authority to prosecute, if such business or trade has been *certified* to be a nuisance or injurious to health by the medical officer of health, or two legally qualified practitioners, or by any ten inhabitants of the district (Public Health Act, s. 114). The authority need not, before taking proceedings, serve on the offender any notice to abate the nuisance (*Bird v. St. Mary Abbots, Kensington*) (x).

Penalty for
nuisances

The person offending (being the owner or occupier

(s) (1863) 13 C. B. N. S. 479; 32 L. J. M. C. 135; 7 L. T. 744.

(t) (1884) 48 J. P. 582; 52 L. T. 99.

(u) (1866) L. R. 1 Q. B. 702; 35 L. J. Q. B. 251; 14 L. T. 593.

(x) [1895] 1 Q. B. 912; 64 L. J. M. C. 215; 72 L. T. N. S. 599; 59 J. P. 391.

of the premises or being a foreman or other person employed by such owner or occupier) is liable (unless he can show that the best practicable means for abating such nuisance have been used) to a

arising from
offensive
trades.

PENALTY not exceeding 5*l.*, nor less than 2*l.* Double penalty of preceding conviction on a second and any subsequent conviction, with limit of 200*l.* The penalty may be mitigated below 2*l.* for a first offence (*ante*, p. 105). There is power to proceed in cases where the building certified as a nuisance is *without* the district similar to that conferred in s. 108, referred to *ante*, p. 831 (*ib.* s. 115).

For provisions as to *alkali works*, see title ALKALI WORKS ACT, p. 246.

(9) UNSOUND MEAT, &c.

As to the regulation of the sale of HORSEFLESH, see 52 & 53 Vict. c. 11, which provides (*inter alia*) that it must not be sold or exposed for sale elsewhere than in a place upon which there are words (in characters not less than four inches long) indicating that horseflesh is sold there.

The Public Health Act, 1875, provides for the seizure of certain specified articles of food "exposed for sale, or deposited in any place for the purpose of sale, or of preparation for sale, *and* intended for the food of man." The articles specified in s. 116, are: "any animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, flour, or milk."

Any medical officer of health or inspector of nuisances may at all reasonable times make an inspection of such articles, and if it appears to him that they are diseased, or unsound, or unwholesome, or unfit for food, may seize and carry them away; and this seizure, *at the place of exposure or deposit*, is a condition precedent, *under the Act of 1875*, to the obtaining of a conviction against the owner or the person on whose premises the food was found (*Vinter v. Hind*) (*y*). But as to the effect of the Act of 1890, where it has been ADOPTED, see *post*, p. 842.

Powers of
inspection
and seizure.

After seizure, the meat or food is taken before a justice, and if it appears to him to be diseased or

Justice may
order destruc-
tion.

(*y*) (1883) 10 Q. B. D. 63; 48 L. T. 359; 52 L. J. M. C. 93; 47 J. P. 373.

unsound, *or* unwholesome, *or* unfit for the food of man, he must condemn it and ORDER it to be destroyed or so disposed of as to prevent it being exposed for sale or used for food (38 & 39 Vict. c. 55, s. 117). This order may be made in the absence of the owner or person on whose premises it was found (*ante*, p. 61). "The functions of the magistrate appear to be merely ministerial, except that he must inquire whether the article is in fact unsound, unwholesome, or unfit for the food of man," per *Bigbam, J.*, in *Thomas v. Van Os* (z); but the destruction must not take place until an order has been obtained (*Ormerod v. Rochdale Corporation*) (a).

The person to whom the unsound meat, &c., belongs or did belong *at the time of exposure* for sale, *or* the person in whose possession or on whose premises the unsound meat, &c., was found, is liable to a

Penalty.

PENALTY, not exceeding 20*l.*, for every animal, carcase, fish, piece of meat, or any poultry, game, or parcel of vegetables, corn, or milk, &c. The penalty is recoverable by *distress*; and, in default, imprisonment, *without* hard labour, according to scale (p. 111): *or*, the offender *may* be IMPRISONED *without* hard labour, for a term not exceeding THREE MONTHS, without any option of fine.

Before this penalty is inflicted the defendant must be summoned, as he has, of course, a right to be heard in his own defence.

Evidence.

The article must have been exposed *or* deposited for one of the purposes indicated, *and* have been intended for human food. But, if it is found under such circumstances as would support the presumption that it was so exposed or deposited, and so intended, it rests on the person charged to rebut it (*ib.* s. 116): and, in the case of a prosecution by indictment for selling walnuts unfit for food, the terms of the contract of sale were admitted as evidence to show that the articles sold were not intended for the food of man (*R. v. Dennis*) (b).

So also, the defendant may, despite the condemnation by the justice, offer evidence to show that the meat, &c.,

(z) Cited *ante*, p. 61.

(a) (1898) 62 J. P. 153.

(b) [1894] 2 Q. B. 458; 63 L. J. M. C. 153 71 L. T. 436; 58 J. P. 622.

was not in fact unsound (*Waye v. Thompson*) (c). But, if it be proved that it was deposited in a place for the purpose of sale or of preparation for sale, that is sufficient, as against the person in whose possession the meat is found, without any proof that it was *exposed* for sale (*Mallinson v. Carr*) (d); though, of course, there can be no conviction if the defendant shows that, at the time the meat was unsound, it was not intended for the food of man (*Wieland v. Butler-Hogan*) (e). It does not seem necessary for the prosecution to show "guilty knowledge":—at any rate, it need not be shown that the defendant had actual *personal knowledge* of its unsound condition (*Blaker v. Tillstone*) (f).

It must be noted that a conviction can be obtained only against (a) "the person to whom the same belongs or did belong *at the time of exposure for sale*," or (β) the person "in whose possession or on whose premises the same was found." Consequently, where the defendant, having purchased a carcase (which he knew to be unsound), *deposited it for sale* with a salesman on whose premises it was seized, it was held, in the absence of any evidence to show that the meat had been *exposed for sale* on the premises of the salesman where it was seized, that the defendant could not be convicted (*Firth v. McPhail*) (g).

Liability of
vendor.

But, as we have seen, if the article is intended for the food of man, the person who has it actually in his possession for the purpose of sale is liable to a penalty.

And the position is very different under the "Public Health (London) Act, 1891," which, by s. 47 (ii.), (iii.), enables proceedings to be taken against the *vendor* of diseased meat, or an *owner* in such a case as *Firth v. McPhail* (h). Under the London Act, "where there is evidence that the food, at the time of sale, was in an

(c) (1885) 15 Q. B. D. 342; 54 L. J. M. C. 140; 53 L. T. 358; 49 J. P. 693.

(d) [1891] 1 Q. B. 48; 60 L. J. M. C. 34; 39 W. R. 270; 55 J. P. 102.

(e) (1904) 73 L. J. K. B. 513; 90 L. T. 588; 68 J. P. 310; 2 L. G. R. 1074; 20 T. L. R. 419.

(f) [1894] 1 Q. B. 345; 63 L. J. M. C. 72; 58 J. P. 184; 42 W. R. 253.

(g) [1905] 2 K. B. 300; 74 L. J. K. B. 458; 92 L. T. 567; 69 J. P. 203; 21 T. L. R. 403; 3 L. G. R. 478.

(h) *Supra*.

unsound condition and that it was intended for the food of man, a *prima facie* case is established which requires an answer" (per *Alverstone*, C.J., in *Grivell v. Malpas*) (*i*).

Obstructing
officer in exe-
cution of Act.

If a person *prevents* an officer of the authority from entering any premises and making an inspection, or *obstructs* him when carrying out the provisions of the Act, he commits an offence (Public Health Act, s. 118). There must, however, be some overt act of obstruction. So that, where a butcher was requested to go half a mile from his house to his shop, or send someone with a key for the purpose of admitting the inspector to examine suspected meat on a Sunday afternoon, and the butcher refused to do so, it was held that he had not committed an offence (*Small v. Bickley*) (*k*).

PENALTY.—FINE, not exceeding 5*l.*; and in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111).

Search
warrant.

On complaint made on oath by a medical officer or inspector of nuisances, or other officer of the authority, a search warrant may be granted by a justice authorizing such officer to enter any building where it is thought unsound meat, &c., intended for the food of man is kept, and to search for and carry away the same. Any person *obstructing* such officer in the performance of his duty under such warrant commits an OFFENCE (*ib.* s. 119).

Obstructing
execution of
search war-
rant.

PENALTY.—FINE, not exceeding 20*l.*, in addition to any other punishment, recoverable as above.

*Effect of the
Public Health
Act, 1890.
53 & 54 Vict.
c. 59.*

The above provisions of the Act of 1875 extend, as we have seen, to certain *specified* articles of food only. But s. 28 of the Public Health Act, 1890 (which may be ADOPTED by any local authority), materially extends the provisions of the earlier Act, applying those provisions to "ALL articles intended for the food of man SOLD OR exposed for sale, or deposited in any place for the purpose of sale or of preparation for sale." Moreover, where the later Act has been adopted, a justice may condemn any article of food and order it to be destroyed or disposed of *although the same has NOT BEEN SEIZED by the medical officer or inspector* (s. 28). Under the earlier Act, as we have seen, such a seizure *at the place of exposure* or

(*i*) [1906] 2 K. B. 32; 75 L. J. K. B. 647; 95 L. T. 123; 70 J. P. 334; 22 T. L. R. 575; 4 L. G. R. 668.

(*k*) (1876) 32 L. T. 727; 40 J. P. 119.

deposit was a condition precedent to any conviction; while the later Act extends to articles *sold* as well as to those *exposed or deposited for sale*.

But no new offence is created by s. 28 of the Act of 1890 (*Firth v. McPhail*) (l). The word "*sold*" was introduced into the section to extend the power of seizure and to meet such cases as *Vintner v. Hind* (ll), where the seizure by the inspector had taken place whilst the diseased meat was in the hands of a person to whom it had been *sold by the butcher*:—not, as required by the Act of 1875, whilst it remained at the place of *exposure or deposit*.

The Towns Improvement Clauses Act, 1847 (*post*, p. 860), contains provision enabling officers of the local authority to enter and inspect butchers' shops and slaughter-houses, when unsound meat may be seized and condemned, and a PENALTY of 10*l.* imposed in respect of each piece found (s. 131). It seems that the convicting justice must be the same as the condemning justice, though the summons need not be issued by him (*R. v. Thomas, Local Government Chronicle*) (m).

Towns
Improvement
Clauses Act
(10 & 11 Vict.
c. 34, s. 131).

(10) INFECTIOUS DISEASES AND HOSPITALS.

The provisions of the Public Health Act, 1875, respecting infectious diseases have been to some extent superseded and greatly enlarged by the Infectious Diseases (Notification) Acts, 1889 and 1899, and by the Prevention Act, 1890 (53 & 54 Vict. c. 34), which statute may be *adopted* by any local authority (*ante*, p. 578). They are also extended to canal boats by the Canal Boats Act, 1877 (40 & 41 Vict. c. 60, ss. 4, 5), and to tents, vans, &c., by the Housing of the Working Classes Acts, 1885 and 1890 (48 & 49 Vict. c. 72, and 53 & 54 Vict. c. 70). In districts where the adoptive Act is *not* in force, recourse must be had to the provisions of the Public Health Act, 1875, which enables any local authority (on the certificate of their medical officer, &c., that cleansing would check infectious disease) to require the *cleansing and disinfecting* of any house and articles

Provisions of
Public Health
Act.

(l) *Ante*, p. 841.

(ll) *Ante*, p. 839.

(m) (1901), p. 1273.

Notice to
cleanse and
disinfect.

therein. Notice to cleanse must be given to the owner or occupier, and if he does not comply, he commits an OFFENCE, while the authority may do the work and recover the expenses summarily (38 & 39 Vict. c. 55, s. 120).

PENALTY.—FINE, not less than 1s. and not exceeding 10s., for every day of default; and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111).

As to mitigation of penalty for a first offence, see *ante*, p. 105.

Disinfection
of infected
bedding, &c.

The authority may not only require bedding, clothing and other articles to be disinfected, but they may direct the *destruction* of such bedding, &c. If, however, it is ordered to be destroyed, the authority may and, in the absence of special circumstances should, compensate the owner, unless he be himself in default; the amount of compensation, if under 20l., being assessed, at the option of either party, by a court of summary jurisdiction (38 & 39 Vict. c. 55, ss. 121, 308).

But it seems that a destruction, in obedience to the instruction of a medical officer of health, will not necessarily support a claim to compensation against the council (*Garlick v. Knottingley U. D. C.*) (*n*).

Removal of
infected
person to
hospital.

A *justice*, on the certificate of a doctor, and with the consent of the superintending body of a hospital, may ORDER any person suffering from a *dangerous* infectious disorder to be removed to such hospital when such person is—

- (a) Without proper lodging or accommodation; [It has been held that the section extends to the protection of *other* persons from infection, and that the order, therefore, must be made if the patient's room cannot be *isolated* (*Warwick v. Graham*) (*o*)], or
- (b) Lodged in a room occupied by more than one family; or
- (c) Is on board any ship or vessel.

If the sufferer is lodged in any common lodging-house, he may, with the like consent and on a like certificate, be removed by *order* of the *local authority*. And any person who *wilfully disobeys or obstructs* the execution of

(*n*) (1904) 68 J. P. 494; 2 L. G. R. 1345.

(*o*) [1899] 2 Q. B. 191; 80 L. T. 773; 63 J. P. 599.

an order under this section commits an OFFENCE (38 & 39 Vict. c. 55, s. 124).

In districts to which section sixty-five of the *Public Health Act*, 1907, has been APPLIED, the section last cited is extended in its operation to all cases of persons who cannot be effectually isolated (7 Edw. 7, c. 53, s. 65).

On a charge of *obstruction*, justices cannot go behind the order or inquire into the grounds on which it was made (*R. v. Davey*) (p).

PENALTY.—FINE, not exceeding 10*l.*, recoverable by distress, and, in default, imprisonment *without* hard labour, according to scale (p. 111).

It is an OFFENCE—

(a) For any person suffering from any *dangerous infectious disorder* to expose himself without proper precautions in any public place.

(b) For such a person to enter any public conveyance without notifying the fact to the owner or driver.

(c) For the owner or driver of such conveyance not to provide for the disinfection thereof, if he has knowledge of the facts.

(d) For a person *in charge* of anyone so suffering to expose the sufferer. [Where section sixty-two of the *Public Health Act*, 1907, has been APPLIED, this extends to *causing or permitting* such sufferers to be exposed (7 Edw. 7, c. 53, s. 62).]

(e) To dispose of infected bedding, &c., except for purpose of disinfection (*Public Health Act*, ss. 126, 127).

PENALTY.—FINE, not exceeding 5*l.*, recoverable by distress. And also, in case (b), any loss or expense incurred by the owner and driver in causing disinfection.

It is, further, an offence—

(f) To let any house or part of a house where there has been any dangerous infectious disorder, without causing proper disinfection as certified by a qualified medical practitioner.

(g) For any person letting for hire, or showing for the purpose of letting for hire, any house or part of a house, to make knowingly a false answer to an intending hirer thereof as to the fact of there being (or

(p) [1899] 2 Q. B. 301; 68 L. J. Q. B. 675; 80 L. T. 798; 63 J. P. 515.

OTHER
OFFENCES
(P. H. ACT,
SS. 126—129).

within six weeks previously having been) therein any person suffering from such disorder (*ib.* ss. 128, 129).

PENALTY.—FINE, not exceeding 20*l.*; and, in case of (g), *alternatively*, IMPRISONMENT, with or without hard labour for not more than ONE MONTH.

Breach of regulations of Local Government Board.

The Local Government Board may make regulations whenever any part of England is threatened with any formidable epidemic, endemic, or infectious disease; and it is the duty of the local authority to superintend the execution of such regulations for the purposes following—

- (a) The speedy interment of the dead;
- (b) House-to-house visitation;
- (c) The provision of medical aid, ventilation, disinfection, &c.

And any person who wilfully violates such regulations or obstructs any person in executing them, commits an OFFENCE (38 & 39 Vict. c. 55, ss. 134, 140).

As to the recovery of heavy PENALTIES (not exceeding 100*l.* and a daily penalty of 50*l.*) which may now be imposed for breach of regulations, see 59 & 60 Vict. c. 19, s. 1 (iii.).

As to regulations with a view to the treatment of cholera, &c., see 38 & 39 Vict. c. 55, s. 130; as to regulations relating to the conveyance of infection by means of vessels entering or leaving *ports*, see 4 Edw. 7, c. 16; and as to the importation, distribution, &c., of *food*, see 7 Edw. 7, c. 32; S. R. & O. 1908, Nos. 717, 718; and the specimen forms prepared by the Local Government Board (73 J. P. 459). See, too, amending regulations in 73 J. P. 589.

PUBLIC HEALTH ACT, 1907.

When Part IV. of the *Public Health Act*, 1907, has been APPLIED, it is made unlawful, under penalties, for an infected person to carry on his occupation (7 Edw. 7, c. 53, s. 52); to allow a child suffering from infectious disease to attend school after notice (*ib.* s. 57); for any infected person to use a book from a public or circulating library, or for anyone to permit such user or to return the book after it has been exposed to infection without disinfection by the authority (*ib.* s. 59); for the driver of a public vehicle knowingly to convey an infected person or to fail to notify the medical officer (*ib.* ss. 63, 64); to hold a wake on the body of a person dying

of infectious disease (*ib.* s. 68); to send infected clothes to a laundry (*ib.* s. 55).

There are also provisions as to the conduct of dairies (*ib.* ss. 53, 54); as to the purification of filthy articles (*ib.* s. 56); as to the disinfecting of premises (*ib.* s. 66); as to the furnishing of list of scholars in a school where infection exists (*ib.* s. 58); and as to the removal of persons from infected premises (*ib.* s. 61).

(11) MORTUARIES.

Any justice may, on a medical certificate, order the removal of the dead body of one who has died of any infectious disease, or which is otherwise in a condition to endanger the health of the inmates of any house, to be removed to a mortuary, and may direct burial within a specified time; and the relieving officer must, in default of the friends doing so, bury the body and recover the expenses in a summary manner as a "civil debt" (*ante*, p. 118) from any person legally liable to pay the expenses of such burial (38 & 39 Vict. c. 55, s. 142). Mortuaries.

Any person obstructing the execution of such an order is liable to a penalty of 5*l.*, recoverable by distress.

By the *Infectious Diseases (Prevention) Act*, 1890, in districts where that Act has been adopted, the time is limited to *forty-eight* hours after death, and the power of the justice to order immediate burial is extended to any case in which he shall think it necessary (*ante*, p. 579).

(12) HIGHWAYS, STREETS AND BUILDINGS.

The general provisions relating to highways, and the offences which are punishable summarily under the Highway Act, have been already dealt with (see *ante*, p. 531). But the Public Health Acts, 1875—1907, also confer powers and impose liabilities and obligations on urban and district authorities in respect of the management and control of streets and roads, and incorporate for this purpose portions of the Towns Improvement Clauses Act, 1847. Highways.

Under these statutes, urban authorities are enabled to recover certain expenses summarily, and to enforce *bye-laws* concerning the management of *streets* by application to a court of summary jurisdiction.

Local authority to repair streets repairable by the inhabitants at large.

Damaging such streets an offence.

All streets which are highways *repairable by the inhabitants at large* within any urban district, and the pavement and materials thereof, are *vested in* and under the *control* of the authority, whose duty it is to pave and repair such streets; and any person wilfully displacing or injuring the pavement, materials, fences, or trees therein, commits an OFFENCE (38 & 39 Vict. c. 55, s. 149).

PENALTY.—FINE, not exceeding 5*l.*, and a further penalty not exceeding 5*s.* for every square foot of pavement, stones, &c., injured or displaced; and, in default of distress, imprisonment, *without* hard labour, according to scale (p. 111).

But an authority cannot interfere with the passage of wires for conveying electric current over the street, unless such wires encroach upon the stratum of air which would be reasonably required for the use of the street as a street (*Finchley Electric Light Co. v. Finchley U. D. C.*) (q).

Where *trees* have been injured, compensation may be claimed in addition to the penalty.

Streets *not* repairable by inhabitants at large.

PUBLIC HEALTH ACT, s. 150.

Where a street within any urban district, *not repairable by the inhabitants at large*, or the carriageway, footway, or other part thereof, is not sewered, levelled, paved, metalled, flagged, channelled, made good, or lighted *to the satisfaction of the authority*, such authority may serve a notice on the owners or occupiers of the premises fronting, adjoining, or abutting on such parts of the street as require paving, &c., enjoining them to do what is necessary; but before this step is taken, plans and an estimate of the cost must be prepared. It is a condition precedent to the right of recovery that such estimate should be made; and it is, apparently, essential that the notice should state that the plans and sections have been prepared and deposited (*Stourbridge U. D. C. v. Butler*) (qq). If the notice is not complied with the authority may execute the works and *recover the expenses in a summary manner* (i.e., as a "civil debt," *ante*, p. 118) in such proportion as is settled by the surveyor of the authority (*ib.* s. 150). If, however, the frontager disputes the *apportionment* the matter must be settled by

(q) [1903] 1 Ch. 437; 72 L. J. Ch. 297; 67 J. P. 97.

(qq) [1909] 1 Ch. 87; 78 L. J. Ch. 59; 7 L. G. R. 183; 99 L. T. 912; 25 T. L. R. 24; 73 J. P. 3.

arbitration; and when the amount in dispute is under 20*l.*, it may be determined, at the option of either party, by a court of summary jurisdiction (*ib.* s. 181).

Unless the frontager disputes the *apportionment* by written notice within the time limited by s. 257 (*i.e.*, three months from service of notice of the amount due from him), he is precluded from raising the question, and cannot do so in the proceedings before the justices to recover the expenses, *as such defence does not relate to the whole of his legal liability*. The justices must, in the absence of any other defence, make an order upon him for payment of the amount (*Derby (Mayor) v. Grudgings*) (*r*). But, as we have already seen, if the amount is under 20*l.* and the apportionment has been challenged, the justices, although they cannot entertain objections to the total cost, have power to determine *as arbitrators* whether the *apportionment* is good or bad and whether the amount claimed ought to be paid or not. This is what appears to have been done in the case of *Cook v. Ipswich* (*s*). After the expiration of the *three months*, during which the apportionment may be disputed, a *demand* for payment must be made; and then, *within six months* of this demand, the *complaint* for recovery of the expenses must be made before a justice.

Order by justices for recovery of expenses incurred in private street improvements.

Under this section (s. 150), as under the Metropolitan Management Acts, the authority is the sole judge of necessity, and the justices cannot inquire into the necessity for or the reasonableness or otherwise of the proposed works (*cf. Stroud v. Wandsworth Board*) (*t*). But an apportionment is not conclusive of *every* defence which can be set up when the frontager is called upon to pay. The defendant *cannot* set up that the authority or their surveyors have exercised their jurisdiction *erroneously*; that is matter for appeal to the Local Government Board. But the justices *can* entertain an objection that the authority had *no* jurisdiction to direct the works ordered or to charge the defendant with any share of the expenses. The court, therefore, must, if necessary, inquire whether

What questions the justices may entertain.

(*r*) [1894] 2 Q. B. 496; 63 L. J. M. C. 170; 43 W. R. 74; 58 J. P. 685.

(*s*) Cited *ante*, p. 811.

(*t*) [1894] 2 Q. B. 1; 63 L. J. M. C. 88; 70 L. T. 190.

What questions justices may entertain—*contd.*

(P. H. ACT, s. 150).

the defendant is a frontager, whether the place in question is a "street" within the meaning of the section, and whether it is a highway repairable by the inhabitants at large, as these matters relate to the *whole* of the defendant's liability. If the road was in existence before 1835, the local authority must give some *prima facie* evidence that it is *not* a highway repairable by the inhabitants at large, as the onus of proof rests on the complainant (cf. *ante*, p. 525, and *Vyner v. Wirrall R. D. C. (tt)*). As to the reception in evidence of old maps and plans, see the case last cited.

The question whether the *locus in quo* is a "street" within the interpretation of s. 4 and the numerous cases decided thereon, is not merely one of *fact*. It is a difficult question partly of law and partly of fact; and the court may, in some circumstances, presume and find that the road is a highway *repairable by the public*, although it be not shown to have existed before 1835 nor shown to have been "adopted" by the authority (cf. *Leigh U. D. C. v. King (u)*). If the authority are not satisfied with the *sewering* of a private street, they may take proceedings under s. 150; but their powers under that section, if in fact exercised, must be exercised *once for all*, as the sewers are vested in the authority, and it is their duty to maintain them (*Bonella v. Twickenham L. B. (x)*; cf. *Bloor v. Beckenham U. D. C. (xx)*). So far, however, as the *paring*, channelling, &c., of a private street is concerned, it seems that the provisions of the section may be applied whenever the authority are reasonably dissatisfied with the condition of the street, unless and until it becomes repairable by the public under s. 152 or otherwise (*Barry and Cadoxton L. B. v. Parry (y)*). Where the boundary line between two districts runs along the kerb of the footpath on one side of a street, the authority in whose district the carriageway lies cannot recover against the frontagers *outside* such district (*Hornsey Corporation v.*

(tt) (1909) 7 L. G. R. 628; 73 J. P. 242.

(u) [1901] 1 K. B. 747; 70 L. J. K. B. 313; 65 J. P. 243.

(x) (1887) 20 Q. B. D. 63; 57 L. J. M. C. 1; 58 L. T. 299.

(xx) [1908] 2 K. B. 671; 77 L. J. K. B. 864; 72 J. P. 325; 6 L. G. R. 876; 99 L. T. 299.

(y) [1895] 2 Q. B. 110; 64 L. J. Q. B. 512; 59 J. P. 421.

Birkbeck) (z). But frontagers are liable to pay for private street improvements, although their premises enjoy no present or direct access to the street (*Newport U. S. A. v. Graham*) (a); and a share of the expenses may be recovered from an owner of premises adjoining the street, although, when notice was given to do the work, he had not become the owner, and, before demand was made for payment of the apportioned part, he had parted with his interest in the premises (*East Ham D. C. v. Aylett*) (b).

The same proceedings may be taken and the same powers may be exercised in respect of "every street or road of which a part is or may be a public footpath or repairable by the inhabitants at large as fully as if the whole of such street or road was a highway not repairable by the inhabitants at large" (s. 150).

Streets in part repairable by the inhabitants at large.

Where houses adjoin one side of a street (repairable by the public) and frontagers on the other side, proposing to build, widen the street for their own convenience, they must pave the added strip at their own expense (*Property Exchange, Ltd. v. Wandsworth*) (c). If, moreover, there be an ancient footpath, or an "occupation" carriageway over which the public enjoy some limited rights, or even a narrow country lane repairable by the public, and the adjoining owners, with a view to the development of their estates, throw strips of land into the old roadway and thus render it necessary that it should be "made up" and repaired as a "street," it would seem that the whole must be dealt with as a *private street* and the repairs charged upon the frontagers (*Evans v. Newport S. A.*) (d).

But, if there already exist a roadway repairable by the public, with houses built more or less continuously on one of its sides, *i.e.*, if there already exists a "street," using that term as it is employed in common parlance, and if this "street" be widened, at the instance of building owners (by the addition of a longitudinal strip extending along the side opposite to the existing houses),

(z) [1906] 1 K. B. 521; 75 L. J. K. B. 348; 70 J. P. 140.

(a) (1882) 9 Q. B. D. 183; 31 W. R. 121; 47 J. P. 133.

(b) [1905] 2 K. B. 22; 74 L. J. K. B. 471; 69 J. P. 205.

(c) [1902] 2 K. B. 61; 84 L. T. 689; 65 J. P. 407.

(d) (1889) 24 Q. B. D. 264; 61 L. T. 684; 38 W. R. 400; 54 J. P.

it is submitted that it is to *this added portion* only, treated as a separate entity, the provisions of s. 150 should be applied.

Different procedure where the PRIVATE STREETS ACT, 1892, has been adopted or is *in force*.

55 & 56

Vict. c. 57.

The Private Streets Works Act, 1892, may be ADOPTED by *urban* authorities, and the Local Government Board may invest *rural* authorities with similar powers; and, where it has been adopted, ss. 150—152 of the Public Health Act, 1875, and s. 41 of the Public Health Act, 1890, do not apply (55 & 56 Vict. c. 57, s. 25). The Act of 1892 extends the powers of the authority, and enables them to sewer, pave, or light a private street, and if they think fit to contribute the whole or part of the expenses out of the district fund (*ib.* s. 15), which under s. 150 of the earlier Act they were unable to do.

Power of justices to determine objections to proposed works UNDER ACT OF 1892.

Under either Act, the expenses may be apportioned between the frontagers and recovered summarily; but, *where the Act of 1892 has been ADOPTED*, a court of summary jurisdiction, at the instance of owners of property in such private streets, may hear and determine objections to the proposals of the authority, and these proposals must be formulated in manner provided by s. 6 of that Act. The various grounds of objection (notice of which must be served by an aggrieved owner on the authority within *one month* after the publication of the resolution approving the specifications, &c., of the proposed works) are specified in s. 7, and, upon an application by the authority, the court is bound to appoint a time for considering them. Service of notice of the "provisional apportionment" addressed to the "owner" is a *condition precedent* to proceedings (*Wirral R. D. C. v. Carter*) (*e*). But as to the mode of serving such a notice, see s. 267 of the Public Health Act, 1875, *ante*, p. 806. The court, in dealing with the proposals, plans, or apportionments, may either quash them in whole or in part, or may amend, as it thinks fit, and it has unlimited discretion as to the costs of the proceedings (*ib.* s. 8). If an owner object that *part* of the street is repairable by the public, the court may determine that the *residue* only shall be "made up," and amend the plans accordingly, without directing fresh notices to be served (*Twickenham District*

Council v. Munton) (*f*). The provisional estimate may properly include an item for contingencies (*Standring v. Bexhill Corporation*) (*ff*); and, if the authority point out that a provisional apportionment is wrong, justices may amend although no specific notice of objection may have been made under s. 7 (*Hall v. Bolsover U. D. C.*) (*f*₃). But, in the absence of a resolution of the urban authority, justices are not empowered to say that the provisional appointment is to be based on any other consideration than that of frontage (*Bridgwater Corporation v. Stone*) (*f*₄).

The adoptive Act (*i.e.*, the Act of 1892) imposes a limitation upon the powers of the authority, and, under that statute, it is for the justices to decide upon the *reasonableness and sufficiency* of the proposed work.

Under Act
of 1892
authority's
discretion
limited.

Thus, in one case which turned upon the construction of a similar section in a local Act, it was held that a court of summary jurisdiction, upon the hearing of a frontager's objection to a private street work, is not limited to a consideration of the mode in which the proposed work is to be done, but may inquire into all the circumstances of the case and decide whether the proposed work is *reasonable* or not (*Corporation of Sheffield v. Alexander*) (*g*). But the *insufficiency* referred to in the Act means the insufficiency of the proposed works to carry out the particular object for which they are proposed. The court cannot, for example, hold the works to be insufficient and unreasonable on the ground that the proposals of the authority did not embrace a widening of the street (*Mansfield Corporation v. Butterworth*) (*h*); and cf. *Southampton Corporation v. Lord* (*i*). The authority does not, however, in any case lose the power of doing the works, but merely of charging the expenses of them on the frontagers.

(*f*) [1899] 2 Ch. 603; 68 L. J. Ch. 601; 81 L. T. 136; 47 W. R. 660.

(*ff*) (1909) 7 L. G. R. 670; 73 J. P. 241.

(*f*₃) (1909) 7 L. G. R. 403; 100 L. T. 372; 73 J. P. 140.

(*f*₄) (1908) 99 L. T. 806; 6 L. G. R. 1171; 72 J. P. 487.

(*g*) (1894) 64 L. J. M. C. 44; 72 L. T. 242.

(*h*) [1898] 2 Q. B. 274; 67 L. J. Q. B. 709; 78 L. T. 527; 46 W. R. 650.

(*i*) (1903) 67 J. P. 189; 1 L. G. R. 324.

Objection
after execu-
tion of works
(Act of 1892).

When the works have been completed and the expenses ascertained, the surveyor must make a *final* apportionment (s. 12). Within *one month* after service of the notice of such apportionment, an "owner" may object on any one or more of the three grounds specified in s. 12 (ii.), and such objections will be determined in the same manner as objections to the *provisional* apportionments. But the court cannot inquire whether the surveyor has been negligent in passing the works as properly executed (*Hayles v. Sandown U. D. C.*) (k).

Buildings in
urban
districts not
to be brought
forward.

(PUBLIC
HEALTH ACT,
1888).

It is an OFFENCE in any *urban* district, without the *written consent* of the authority, to erect or bring forward any house or building in any street beyond the *front main wall* of the house or building on *either side* thereof in the same street, or to build any addition to it beyond the *front main wall* on either side (51 & 52 Vict. c. 52, s. 3).

PENALTY.—FINE, not exceeding 2*l.*, for every day the offence is continued *after written notice*, recoverable by distress, and, in default, imprisonment, *without hard labour*, according to scale (p. 111).

Proceedings need not necessarily be commenced within six months of the erection of the building, because the maintaining of the building *after notice* is a "continuing" offence (cf. *Rumball v. Schmidt*) (l). It is, however, presumed that, unless the notice to discontinue be given within six months of the completion of the building, proceedings cannot be taken summarily.

It is for the justices to determine as a question of fact whether the structure is a building or not, provided, of course, that the erection is capable of being regarded as a building (*Leicester (Mayor) v. Brown*) (m).

As to the meaning of the terms used in this section, see, *e.g.*, the judgment of Romer, J., in *Att.-Gen. v. Edwards* (n). And see *Jenkins v. Merthyr Tydvil U. D. C.* (o). Where plans were approved by a committee and such approval was confirmed by the urban authority, it was held that there had been a "written

(k) [1903] 1 K. B. 169; 72 L. J. K. B. 48; 67 J. P. 177.

(l) (1882) 8 Q. B. D. 603; 46 L. T. 661; 46 J. P. 567.

(m) (1893) 62 L. J. M. C. 22; 57 J. P. 70; 67 L. T. 686; 41 W. R. 78.

(n) [1891] 1 Ch. 194; 63 L. T. 639.

(o) Discussed, *ante*, p. 94.

consent" (*Merrett v. Charlton Kings U. D. C.*) (*p*). The purchaser of a building erected in contravention of the section, who allowed it to remain in the same state after notice from the authority, was held not to be a person offending against the enactment (*Blackpool Corporation v. Johnson*) (*q*).

URBAN authorities have power to make BYE-LAWS and impose PENALTIES for the breach thereof, which may be recovered summarily; but the FINE must not exceed 5*l.* for each offence, and (in the case of continuing offences), a sum not exceeding 2*l.* per day after notice from the authority (see *ante*, pp. 35, 804). Such BYE-LAWS may be made in respect of the following matters (38 & 39 Vict. c. 55, ss. 157, 183):—

BYE-LAWS
for regulation
of streets and
buildings.

(a) The level, width, and construction of *new streets*, and provisions for the sewerage thereof (see, *e.g.*, *Leyton U. D. C. v. Chew*) (*r*).

(b) The structure of walls, chimneys, &c., of new buildings for securing *stability* and the *prevention of fires*, and for purposes of *health* (see also 53 & 54 Vict. c. 59, s. 23, which greatly extends the scope of such bye-laws in districts where Part III. of the Act of 1890 is in force; and 7 Edw. 7, c. 53, ss. 23, 24, where the Act of 1907 has been applied).

Bye-laws as to the *construction of buildings* ought to contain provisions under which the hard-and-fast rules laid down may be dispensed with in the case of buildings of exceptional character to which those rules are not suited. In the absence of such provisions, justices may treat a breach as trifling and dismiss an information (*Pomeroy v. Malvern U. D. C.*) (*s*). A small wooden building intended to be used as a stable has been held to be a "new building" (*South Shields Corporation v. Wilson*) (*t*): so, too, an old railway carriage used as a dwelling-place (*Hanrahan v. Leigh-on-Sea U. D. C.*) (*tt*).

(*p*) (1903) 67 J. P. 419.

(*q*) [1902] 1 K. B. 646; 71 L. J. K. B. 485; 87 L. T. 28.

(*r*) [1907] 2 K. B. 283; 76 L. J. K. B. 781; 71 J. P. 355.

(*s*) (1903) 89 L. T. 555; 1 L. G. R. 825; 67 J. P. 375; 20 Cox, 572.

(*t*) (1901) 84 L. T. 267; 65 J. P. 294.

(*tt*) [1909] 2 K. B. 257; 78 L. J. K. B. 725; 7 L. G. R. 644;

101 L. T. 192; 53 S. J. 502; 73 J. P. 308.

(c) Ventilation and drainage of buildings, and the closing of houses unfit for habitation.

(d) The giving of notices, deposit of plans, &c., by persons about to lay out a new street or to construct buildings, and as to inspection and the like.

An urban authority may also make bye-laws as to public walks and pleasure grounds (38 & 39 Vict. c. 55, s. 164).

Bye-laws
under Public
Health Act,
1890, s. 23.

BYE-LAWS may also be made under the *Public Health Act*, 1890 (53 & 54 Vict. c. 59, s. 23), and, in districts where that Act has been *adopted or is in force*, it must be taken to *extend* the powers conferred under the earlier Act. In such districts special provisions (under the sanction of appropriate penalties) apply in respect of the construction and uses of dwelling-houses, cellars under streets, places of public resort, roots and platforms to be used on the occasion of a show, public procession, &c. (see, *e.g.*, ss. 33—37).

Plans must be
deposited and
consent ob-
tained before
building.

P. H. Act,
s. 158.

It is the duty of every person to *deposit plans* before commencing any building operations, and, where such plans are required by any bye-law, the authority must signify its approval or disapproval of them within *one month*. If the works are commenced after notice of disapproval, or before the month has expired without approval, *and* are in any respect not in conformity with the bye-laws in force, the authority may pull down or remove the work already executed, and recover the expenses incurred in or about the removal, either from the person doing the work or from the person causing it to be done, in a summary manner (*i.e.*, as a “civil debt,” *ante*, p. 118). But the authority cannot demolish the building without previously giving the owner an opportunity of showing cause against the proposed demolition (*Hopkins v. Smethwick L. B.*) (*u*). The offender will also be liable to any PENALTY he may have incurred for breaches of the *bye-laws* in erecting the building or continuing it *after notice*; and, where a bye-law (under a local Act) prohibited the erection of a building unless the plans had been approved, it was held that a builder was properly convicted of building without such approval, although there was no evidence that the erection

Penalty under
bye-laws.

(*u*) (1890) 24 Q. B. D. 712; 62 L. T. 783; 59 L. J. Q. B. 250.

contravened any other provisions of the bye-laws (*Cook v. Hainsworth*) (x). But, in this case, the local Act gave a right of appeal against the *refusal to approve*, otherwise the bye-law might have been held to be unreasonable. The *existence of the work* during its continuance in such a form and state as to be in contravention of a bye-law is to be deemed a *continuing* offence, but penalties are not to be incurred in respect thereof after the expiration of one year from the day when the offence was committed or the bye-law was broken (38 & 39 Vict. c. 55, s. 158 ; and see *ante*, p. 35). In a recent case, the defendant was charged with executing work contrary to a bye-law, but a *continuing* offence was *not charged in the information*, though he had been served with a notice warning him that he was liable to a daily penalty. It was held that, *under this section*, penalties as for a *continuing* offence were rightly imposed upon him (*Airey v. Smith*) (y). In another case, the defendant, the *builder* of certain premises, was convicted of erecting them in contravention of a bye-law, which provided further penalties for *continuing* after notice. After the conviction a notice was served upon him, but it was held that he was not liable for a continuing offence, as he had never been *owner* of the premises, and, since the conviction, had not been in possession of, or entitled to enter, them (*Welsh v. West Ham Corporation*) (z).

Penalty
under bye-
laws—*contd.*

As to the regulations of STREETS and BUILDINGS where Part II. of the *Public Health Act*, 1907, has been applied, see 7 Edw. 7, c. 53, ss. 15—33. The deposit of plans with the local authority is dealt with by ss. 15—17. PENALTIES are imposed for laying out a street otherwise than in compliance with an order (s. 17 (iii.)) ; closing or narrowing the entrance of a court without consent of the authority (s. 26) ; erecting temporary buildings without permission (s. 27) ; depositing building materials in a street without consent (s. 29) ; and for using a hoarding adjoining a street without having it securely fixed (s. 32). Provision is made for allowing crossings for cattle over footways (s. 18) ; for the execution of urgent repairs to

PUBLIC
HEALTH
ACT, 1907.

(x) Cited *ante*, p. 352.

(y) [1907] 2 K. B. 273 ; 76 L. J. K. B. 766 ; 96 L. T. 691 ; 5 L. G. R. 713 ; 71 J. P. 285.

(z) [1900] 1 Q. B. 324 ; 69 L. J. Q. B. 114 ; 82 L. T. 262.

PUBLIC
HEALTH
ACT, 1907
—*contd.*

private streets (s. 19); and as to the erection of temporary buildings (s. 27). Provision is also made for the payment of COMPENSATION (*ante*, p. 810) by an authority to persons injuriously affected by variations in the position or direction of new streets (s. 17); by the rounding off of corner buildings (s. 22); or by the removal of materials in streets (s. 28); and there is provision for the recovery of damages and expenses incurred by the authority in respect of footways injured by excavation, &c. (s. 20). While certain EXPENSES may be recovered by the authority *summarily* as a *civil debt* (see *ante*, p. 118), *i.e.*, the cost of paving a yard belonging to a dwelling-house or providing for its drainage (s. 25); expenses incurred in removing temporary buildings erected without permission (s. 27); the cost of removing building materials deposited (or filling up excavations created) in a street without consent (s. 29); the cost of repairing or enclosing dangerous places (s. 30); and the cost of fencing lands adjoining streets (s. 31).

(13) TOWNS IMPROVEMENT CLAUSES ACT, 1847.

This Act is incorporated in the Public Health Act, 1875, by s. 160, so far as it relates to the management and protection of streets, &c. It therefore applies to all *urban* districts, and by s. 276 it may be applied, by order of the Local Government Board, to *rural* districts also.

OFFENCES as
to streets and
buildings.

The following OFFENCES may be referred to. The maximum penalty, which is inserted in brackets, is recoverable by *distress*, and, in default, imprisonment *without* hard labour, according to scale (p. 111).

- (a) Destroying the *number* of a house, or the *name* of a street put up by the authority, or putting up any other number or name. [2*l.*] (10 & 11 Vict. c. 34, s. 64.) See the judgment of *Alverstone*, C.J., in *Collins v. Hornsey U. D. C.* (a).

Where the *Public Health Act*, 1907, has been applied, the authority may alter the name of a street with the consent of two-thirds in number and value of the ratepayers (7 Edw. 7, c. 53, s. 21).

- (b) Occupier failing to comply, within one week after notice, with order to mark his house with approved

(a) [1901] 2 K. B. 180; 70 L. J. K. B. 802; 65 J. P. 600.

number, or to renew such number when obliterated. [2*l.* and cost of marking, &c.] (10 & 11 Vict. c. 34, s. 65.)

- (c) Occupier *not removing a projection* in front of a house, which is an obstruction to safe passage along any street, *within fourteen days* after notice. [2*l.* The authority may remove or alter and recover expenses.] (*Ib.* s. 69.) Notice may, at the option of the authority, be served on the *owner*.
- (d) Occupier not altering, within *eight days* after notice, any door or gate opening *outwards* on any street. [2*l.* The authority may make alteration and recover expenses.] (*Ib.* s. 71.) Notice may, at the option of the authority, be served on the *owner*.
- (e) Occupier not making as required, or not keeping in good repair, the *covering* to any *opening* in the pavement, which is an entrance into a *cellar*. [5*l.*] (*Ib.* s. 73.) Directions as to the requirements may, at the option of the authority, be given to the *owner*.
- (f) Occupier not putting up, within *seven days* after being ordered to do so, *or not keeping* in good repair, a shoot to prevent *water* falling on passengers or flowing over the footpath. [2*l.* per day.] (*Ib.* s. 74.) The order may be served on the *owner*, at the option of the authority.
- (g) Any person taking down or removing, without consent, any *bars* or chains put up *during repairs* of streets or drains, or extinguishing *lights* so put up. [5*l.*] (*Ib.* s. 79.)
- (h) Any person failing to *light and protect* deposits of *building materials* or *holes* which he has caused to be placed or made in the street, *or continuing* such deposits or holes for an unreasonable time. [5*l.*, and daily PENALTY of 2*l.*] (*Ib.* ss. 81, 82.)
- (i) Any person *erecting or repairing a building*, and failing to put up a *hoarding* and keep it lighted by night, *or to remove it* when required. [5*l.*, and daily PENALTY of 2*l.*] (*Ib.* s. 80.)

Where Part III. of the *Public Health Act*, 1890, has been adopted this section (*i.e.* s. 80) is not in force, the procedure being under s. 34 of the Act of 1890.

Two justices may make an ORDER upon any owner or, in his default, the occupier of a *ruinous building* or

ruinous
buildings.

Ruinous
buildings
—*contd.*

wall (found to be dangerous by the surveyor) to pull it down or make it secure; and if this is not done within the specified time, the authority may do the necessary work, and call upon the owner to pay the expenses, which may, at any time within six months from the date of demand, be levied by warrant of distress, and any justice may issue his warrant accordingly. In default, the authority may, after giving the prescribed notice, take possession of the building, or if it has been pulled down, the land on which it stood, and sell the materials and deduct the expenses from the amount realised (10 & 11 Vict. c. 34, ss. 75—78). As to service of summons, see *ante*, p. 806, and *R. v. Mead* there cited.

(14) SLAUGHTER-HOUSES.

Slaughter-
houses must
be licensed or
registered in
urban
districts.

An *urban* authority may purchase *slaughter-houses* and make BYE-LAWS respecting their management; and, under the Towns Improvement Clauses Act, 1847, ss. 125—131, no place shall be used as a slaughter-house or knacker's yard (if it were not so used at the time of the application of the Act, and has so continued to be used ever since (*Hides v. Littlejohn*) (*b*)), unless a *licence* has been first obtained from the district council; and if any unlicensed premises are so used, the person using them is liable to a

PENALTY not exceeding 5*l.*, and a like sum for every day of continuance of offence after conviction; and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111) (10 & 11 Vict. c. 34, s. 126).

Places used as slaughter-houses, even if so used at the date of the application of the Act, must (at the expiration of three months therefrom) be *registered*; and, if this be not done after one week's notice from the authority, any person using such premises, or suffering them to be used, as a slaughter-house will be liable to a

PENALTY of 5*l.*, and a daily PENALTY of 10*s.* after the first day, recoverable as above (*ib.* s. 127).

As to the power of the court after conviction to *suspend* or *revoke* the licence, or to forbid the slaughtering of cattle in the registered place, see *ib.* ss. 129, 130. And as to the power of *entry* by officials of the local authority, see *ante*, p. 843.

Notice must
be affixed on
premises.

The owner or occupier of a slaughter-house, licensed

(*b*) (1896) 74 L. T. 24; 60 J. P. 101.

or registered under the Public Health Act, 1875, must, within a month, affix a legible notice on the premises with the words "licensed" or "registered" slaughter-house, as the case may be (38 & 39 Vict. c. 55, s. 170). Any one who makes default in this respect, or who neglects or refuses to affix or renew such notice after requisition in writing from the authority, is liable to a

Slaughter
houses—
contd.

PENALTY of 5*l.*, and a daily PENALTY of 10*s.*, recoverable as above.

Where the *Public Health Act*, 1890, has been ADOPTED in an urban district, licences may be granted for such time as the urban authority specify; but the authority has no power to limit the duration of the licence to less than twelve months (*Taylor v. Winsford U. D. C.*) (*c.*). Any *change of occupation* of a licensed or registered slaughter-house must be notified to the inspector of nuisances *within one month* under a PENALTY of 5*l.* (53 & 54 Vict. c. 59, s. 30). On the conviction of an occupier for selling or having in his possession, &c., unsound meat or flesh the court may *revoke* the licence (*ib.* s. 31).

Where *Public
Health Act*,
1890, has been
adopted.

See also ANIMALS, CRUELTY TO, *ante*, p. 252.

(15) MARKETS AND FAIRS.

By P. H. Act, s. 167, the Markets and Fairs Clauses Act, 1847, so far as it relates to markets, is incorporated (*ante*, p. 705); and PENALTIES are imposed for *obstructing* a superintendent, and for *refusing to weigh* or cause to be weighed any articles exposed for sale or any cart in which goods are brought to market, &c. (10 & 11 Vict. c. 14, ss. 22, 23, 26).

Markets and
fairs.

The authority must appoint a person to keep the *weighing machine*, and he is liable to a PENALTY not exceeding 5*l.* if he refuses or fails fairly to weigh any cart or its loading, or if he gives a false ticket of the weight (*ib.* s. 29). The provisions of this Act have been amended by the Markets and Fairs (Weighing Cattle) Act, 1887 (50 & 51 Vict. c. 27), and by 54 & 55 Vict. c. 70.

Weighing
machine.

PUBLIC HEALTH ACTS AMENDMENT ACT, 1907.

In districts to which Parts VII.—X. of the *Public Health Act*, 1907, have been APPLIED, the authority may

PUBLIC
HEALTH
ACT, 1907.

(*c.*) [1907] 2 K. B. 396; 76 L. J. K. B. 897; 71 J. P. 375.

PUBLIC
HEALTH
ACT, 1907
—*contd.*

(a) grant licences to luggage porters, light porters, public messengers and commissionaires, while any one pretending to be so licensed is liable to a penalty (s. 84); (β) grant licences for pleasure boats, with a right of appeal to a court of summary jurisdiction against the withholding, suspension or revocation of a licence (s. 94). The registration of any person carrying on business as the keeper of a "female domestic servants' registry" is made compulsory, and the authority is empowered to make bye-laws regulating the business (s. 85). Power is given to the authority to regulate sky-signs (s. 91); and to the officer in charge of the police at a fire to control the street traffic (s. 88). Special powers are, too, conferred on the authority as to the making of bye-laws in relation to public bathing-places (s. 92); and as to the user of the sea-shore (s. 82).

All or any of the Parts or sections may be applied to any particular district (s. 2 (ii.)).

RAILWAYS.

Justices must settle compensation for lands taken by railway company where claim does not exceed 50*l.*

Under the Lands Clauses Act, 1845, it is provided that, in case of difference between the promoters of a railway undertaking and the owners of or other parties interested in any lands required for or injuriously affected by the execution of the works necessary to the completion of the undertaking, the question may be settled by two justices *if the amount claimed does not EXCEED 50*l.** Upon the application of either party, a justice may summon the other party to appear before the court, and there is power to examine the parties and their witnesses upon oath, and to decide as to the payment of the costs, the amount of which must be settled by the justices (8 & 9 Vict. c. 18, ss. 3, 22, 24).

And in cases of claims by tenants from year to year or for a less term.

So, also, if compensation is claimed by a *tenant who has no greater interest in the land required than as tenant for a year, or from year to year*, two justices may, in like manner, settle the amount of compensation due to such tenant for his unexpired interest in the term, and for any loss or injury he may have sustained (*ib.* s. 121). But the court has no jurisdiction if *any part* of the claim is in respect of an interest for more than a year, and cannot therefore award compensation if there be a claim in

respect of *adjoining* lands held for more than a year for the injurious affection of such lands for more than a year (*Bexley Heath Railway v. North*) (d).

In the above cases, the justices can only determine the amount of compensation. They cannot entertain any question as to the title to the lands, &c., or give directions as to payment, so that their ADJUDICATION IS NOT AN ORDER under the Summary Jurisdiction Acts (cf. *ante*, p. 30); and the six months' limit (11 & 12 Vict. c. 43, s. 11) does not apply (*R. v. Edwards*) (e).

Adjudication of justices is not an "order."

P. 1004.

Under the Railways Clauses Act, 1845 (8 Vict. c. 20), a great number of questions arising as to matters connected with the making and management of *railways* are referred for settlement to justices, *e.g.*, the occupation of land for spoil banks or side cuttings, or in order to procure materials (ss. 33—39); land taken for a temporary purpose (s. 43); the restoration of roads interfered with by the company (s. 57); the making of level crossings (s. 62); the construction of accommodation works (s. 69); the restoration of railway premises or official books by discharged officials (s. 106). As to enforcing payment of damages, costs or expenses by distress, after ascertainment of the amount by justices, see s. 140, and *ante*, p. 118.

Railways Clauses Act, 1845.

As to the jurisdiction of justices in proceedings instituted under s. 33 of the Tramways Act, 1870, which provides for the determination of differences between road authorities and the tramway promoters, see *R. v. Garrett* (ee).

Tramways Act, 1870.

Certain OFFENCES in connection with railway undertakings may be specially mentioned.

Offences Triable Summarily.

- (a) Every passenger must, on request by an officer or servant of the company, (i.) produce, and, if required, deliver up a ticket showing that his fare is paid; or, (ii.) pay the fare from the place whence he started; or, (iii.) give his name and address. If he fails to do so he incurs a

OFFENCES TRIABLE SUMMARILY. Refusal to produce ticket (a).

(d) [1894] 2 Q. B. 579; 64 L. J. M. C. 17; 58 J. P. 832; 71 L. T. 533.

(e) *Ante*, p. 812.

(ee) (1909) 100 L. T. 533; 7 L. G. R. 541; 73 J. P. 188.

Refusal to
produce
ticket, &c. (a)
—*contd.*

PENALTY of 2*l.*; and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111) (52 & 53 Vict. c. 57, s. 5 (i.)).

If the passenger will neither produce and deliver up a ticket, nor pay the fare, *and* further refuses to give his name and address, any officer of the company or constable may detain him until he can be conveniently brought before a justice or otherwise discharged by due course of law (*ib.* s. 5 (ii.)).

Travelling
without hav-
ing paid fare
with intent to
defraud (b).

Forms of
Information,
post, p. 1228.

(b) Every person commits an OFFENCE who (i.) travels, or attempts to travel, without having previously paid his fare, *and with intent to avoid payment thereof*; OR, (ii.) having paid the fare for a certain distance, knowingly and wilfully proceeds beyond that distance without previously paying the additional fare, *and with intent to avoid payment thereof*; OR, (iii.) having failed to pay the fare, gives in reply to a request by an officer or servant of the company a *false* name or address (*ib.* s. 5 (iii.)).

PENALTY.—*First offence*: FINE, not exceeding 2*l.*, recoverable as in (a). *Second offence*: FINE, not exceeding 20*l.*, recoverable as above; or, IMPRISONMENT, *without* hard labour, for ONE MONTH.

The liability of an offender to punishment under this section is not to prejudice the recovery of any fare payable by him (*ib.* s. 5 (iv.)).

If a passenger travel with a “return ticket” obtained by him from some one else and the ticket was “not transferable,” or, if he travel in a carriage of a class superior to that for which his ticket was issued, he will be in the position of “not having previously paid his fare” (cf. *Gillingham v. Walker*) (*j*). And a demand of the excess fare will not, in itself, protect the offender from a conviction under s. 5 (iii.) (*Noble v. Killick*) (*g*).

It has been held in Scotland that, where a man sought fraudulently (but unsuccessfully) to leave the station without giving up his workman’s ticket (which was undated and could be used at any time), he was not guilty of travelling “without having previously paid his

(*f*) (1881) 44 L. T. 715; 45 J. P. 470.

(*g*) (1891) 60 L. J. M. C. 61.

fare and with intent to avoid payment thereof" (*Calendonian Railway v. Roper*) (*gg*).

(c) Any person who offends against a *bye-law* made by the company and duly confirmed is liable to a Breaches of bye-laws (c).

PENALTY not exceeding 5*l.*, as imposed by the bye-law, recoverable as in (a) (Railway Clauses Consolidation Act, 1845, 8 Vict. c. 20, s. 109). Half the penalty may be awarded to the informer, while the remainder goes to the overseers of the parish in which the offence was committed (*ib.* s. 150). APPEAL lies (*ib.* s. 157).

Injuring or obliterating boards on which the bye-laws are affixed is punishable by a PENALTY of 5*l.* in addition to the expenses of restoration (*ib.* s. 144). APPEAL lies (*ib.* s. 157).

An officer or agent of the company may seize and detain any one who has committed an offence against this (or the special) Act, and whose name and residence are unknown, and convey him with all convenient despatch before a justice (*ib.* s. 154).

The power of railway companies to make bye-laws for the regulation of their traffic is conferred by the last-cited statute, which provides that such bye-laws shall not be repugnant to law, or to the provisions of the Act itself, or to those of the special Act of the company; see also *ante*, p. 350. A bye-law providing that a person travelling without a ticket must pay the fare from the station *whence the train originally started* would operate very unequally, and is clearly unreasonable and void (*London & Brighton Ry. Co. v. Watson*) (*h*).

So, a bye-law subjecting to a PENALTY a passenger "who uses a ticket on any day for which the ticket is not available, or which has already been used on a previous journey," *without stating that the user must be with intent to defraud*, is bad. The very essence of such an offence is a fraudulent intention, and it would seem that this class of offences must now be dealt with under the code provided by 52 & 53 Vict. c. 57, s. 5 (see offences (a) and (b), *ante*, pp. 863, 864; *Huffam v. North Staffordshire Ry. Co.*) (*i*). But a bye-law prohibiting the

(*gg*) [1908] S. C. (J.) 69—Ct. of Just.

(*h*) (1879) 4 C. P. D. 118; 48 L. J. C. P. 316; 42 J. P. 663.

(*i*) [1894] 2 Q. B. 821; 63 L. J. M. C. 225; 71 L. T. 517; 59 J. P. 23; 43 W. R. 28.

entry of a carriage until a ticket has been obtained, or justifying expulsion when no ticket has been taken, would not seem objectionable (and cf. s. 103 of the Railways Clauses Consolidation Act of 1845).

Publication
of bye-laws.

The bye-laws must be kept published on boards at EVERY station, otherwise no penalty can be recovered (8 Vict. c. 20, s. 110). But it has been held sufficient to prove that the bye-law was affixed at the stations at which the defendant got into and got out of the train respectively (*Motteram v. Great Eastern Ry. Co.*) (k); while a certified copy of the bye-laws is admissible in evidence (cf. *ante*, p. 357).

Obstruction
of officials and
wilful tres-
passes (d).

Forms of
Information.
post, p. 1228.

(d) Any person who (i.) wilfully *obstructs or impedes any officer* or agent of the company in the execution of his duty upon the railway or at the stations or other works; OR, (ii.) *wilfully trespasses on such railway, stations, or works, and refuses to quit* when requested by an officer or agent of the company, is liable to a

PENALTY, not exceeding 5*l.*; and, in default of *pay-ment*, imprisonment, *without* hard labour, according to scale (p. 111) (Railway Regulation Act, 1840, 3 & 4 Vict. c. 97, s. 16). The penalty goes to the Crown.

One justice may convict, but as to his power of punishment, see *ante*, p. 12.

An officer of the company may seize and detain the person so offending, and convey him before a justice (*ib.*).

Sending
dangerous
goods un-
marked (e).

(e) Any person who sends by railway any *oil of vitriol, gunpowder, lucifers, or other goods* in the judgment of the company of a *dangerous nature*, without distinctly marking their nature upon the package, or otherwise giving notice in writing to the servant of the company with whom the same are left at the time of sending, is liable to a

PENALTY of 20*l.*; and, in default of *distress*, imprisonment, without hard labour, according to scale (p. 111) (8 Vict. c. 20, s. 105). The penalty goes to the company (*ib.*). APPEAL lies (s. 157). As to the need of proving guilty knowledge, see *Hearne v. Garton* (l).

(k) (1860) 29 L. J. M. C. 57; 7 C. B. N. S. 58.

(l) (1859) 28 L. J. M. C. 216; 2 E. & E. 66.

- (f) Any engine-driver, guard, porter, servant, or *other person employed on the railway* (whether by the company or others), who (i.) *is found drunk* whilst employed upon the railway, OR, (ii.) commits any *offence against the bye-laws or regulations* of the company, OR, (iii.) wilfully or negligently *does, or omits to do, any act whereby life or limb may be endangered or traffic impeded*, is guilty of an OFFENCE (3 & 4 Vict. c. 97, s. 13; 5 & 6 Vict. c. 55, s. 17).

Employé found drunk, infringing bye-laws, &c. (f).

PENALTY.—FINE, not exceeding 10*l.*, and, in default of payment, imprisonment, with or without hard labour, according to scale (p. 111); OR, IMPRISONMENT, with or without hard labour, for not more than TWO MONTHS. The penalty goes to the Crown.

So, too, any person who aids or abets the commission of the offence is similarly punishable.

One justice may convict, but as to his power of punishment, see *ante*, p. 12.

The offender may be seized by any officer of the company and the case dealt with upon complaint on oath, without information in writing; OR the accused (at any rate, if he be a *servant* of the company) may be sent for trial at the quarter sessions (3 & 4 Vict. c. 97, s. 14).

- (g) If a railway company issues tickets without having the fare printed or written thereon in legible characters, a PENALTY is incurred of 2*l.* for every ticket so issued (52 & 53 Vict. c. 57, s. 6). The penalty is recoverable as in (a).

Omitting to print fare on tickets (g).

- (h) If a person has *once* received *warning* from the company or its servants not to go or pass on the railway, he must not be or pass along such railway except to cross at an authorised crossing, under a

Being or passing on railway after notice (h).

PENALTY of 2*l.*, recoverable as in (a) (31 & 32 Vict. c. 119, s. 23; 34 & 35 Vict. c. 78, s. 14). Half the penalty may be awarded to the informer, the remainder goes to the overseers, as in (c). APPEAL lies. And see offence (d) (ii.).

Form of Information, *post*, p. 1229.

Indictable Offences.

The following OFFENCES are triable only on *indictment*, unless the accused be not more than *sixteen* years of age, and consents to summary trial (*ante*, p. 136):—

OFFENCES triable ON INDICTMENT.

Obstructing
engines, &c.

- (i) Any one who, by an unlawful act, or by wilful omission or neglect, *obstructs*, or causes to be obstructed, *any engine or carriage* using a railway, or assists in any such obstruction, is guilty of a *misdemeanour*. [Imprisonment for two years.] (24 & 25 Vict. c. 97, s. 36.)

It has been held to be an offence within this section to obstruct an engine by an alteration of signals, or by making false signals with the arms (*R. v. Hadfield (m)*; *R. v. Hardy (n)*).

Endangering
safety of pas-
sengers.

- (j) Any one who, by any unlawful act, or by wilful omission or neglect, *endangers*, or causes to be endangered, *the safety of any person conveyed* or being upon a railway, or assists in causing such danger, is guilty of a *misdemeanour*. [Imprisonment for two years.] (24 & 25 Vict. c. 100, s. 34.)

Placing
obstructions
on railways
with intent
to upset train
or endanger
safety of
passengers.

- (k) Any one who unlawfully and maliciously places or throws upon or across a railway any wood, stone, or other matter or thing, *or* removes or displaces any rail, sleeper, &c., *or* moves or diverts any points or machinery, *or* shows, hides, or removes any signal or light upon or near any railway, *or* does any other matter or thing WITH INTENT (*a*) to *obstruct*, upset, injure, or destroy an engine, carriage, or truck using such railway, *or* (*β*) to *endanger the safety* of any person travelling or being on such railway, is guilty of *felony*. [Penal servitude for life; triable only at assizes.] (24 & 25 Vict. c. 97, s. 35; 24 & 25 Vict. c. 100, s. 32.)

Throwing
stones, &c., at
engines, &c.,
with intent to
endanger
safety of
passengers.

- (l) Any one who unlawfully and maliciously throws, or causes to fall at, against, into, or upon any engine, carriage, or truck used upon any railway, any wood, stone, or other matter or thing, WITH INTENT to *injure* or *endanger the safety* of any person in or upon such engine, carriage, or truck, or in or upon any other part of the train, is guilty of *felony*. [Penal servitude for life; triable only at assizes.] (24 & 25 Vict. c. 100, s. 33.)

(*m*) (1870) L. R. 1 C. C. R. 253 ; 39 L. J. M. C. 131.

(*n*) (1871) L. R. 1 C. C. R. 278 ; 40 L. J. M. C. 62.

RAPE.

The felony known as rape consists in having unlawful carnal knowledge of a woman against her will, and is triable only at the assizes, being punishable with penal servitude for life (24 & 25 Vict. c. 100, s. 48). The rape may, however, be committed without any accompanying circumstances of violence: thus, submission may be induced by fear, or by means of some fraud practised on the prosecutrix. The result of the cases seems to be that if the woman, although deceived by the man's representations, consents to the act and thoroughly understands its nature, that would not be rape; but if, on the other hand, she is so young and inexperienced that she does not comprehend the nature of the act, as, *e.g.*, if she were led to believe that act was really a surgical operation, a rape would be committed (*R. v. Case* (o); *R. v. Flattery* (p)). Moreover, where the prosecutrix is of unsound mind and incapable of expressing consent or dissent, a rape is committed if unlawful connection be had with her (*R. v. Fletcher* (q); *R. v. Barratt* (r)). And the defilement of *idiots and imbecile women* is now specially provided for by statute (*ante*, p. 365). It is further enacted that a man who induces a married woman to permit him to have connection with her by personating her husband is to be deemed guilty of rape (48 & 49 Vict. c. 69, s. 4).

The wife of the defendant may be called as a witness either for the prosecution or defence and without the defendant's consent (*ante*, p. 174). Evidence.

It is necessary to establish penetration, though it may be of the slightest degree. But as to "attempts," see *ante*, p. 164; and as to assaults with intent to commit a felony, see *ante*, p. 290.

On a charge of rape, the jury may acquit of rape but find the accused guilty of an offence under the Punishment of Incest Act, 1908 (*ante*, p. 566).

On the hearing of a charge of rape or other kindred

(o) (1850) 1 Den. 580; 19 L. J. M. C. 174.

(p) (1877) 2 Q. B. D. 410; 46 L. J. M. C. 130; 36 L. T. 32; 13 Cox, 388.

(q) (1859) 28 L. J. M. C. 85; Bell, 63.

(r) (1873) L. R. 2 C. C. R. 81.

Evidence
of complaint.

offence against a woman or girl, in which proof of non-consent is a material element in the charge under investigation, the fact that a *complaint* was made by the prosecutrix shortly after the alleged occurrence, and the particulars of such complaint, may, so far as they relate to the charge against the prisoner, be given in evidence on behalf of the prosecution, not as being evidence of the facts complained of, but as evidence of the consistency of the conduct of the prosecutrix with the story told by her in the witness-box, and as negating consent on her part (*R. v. Lillyman*) (*s*). This decision has been applied in cases where the question of consent to the assault is immaterial, as, *e.g.*, when the offence is committed against a child of tender years (*R. v. Kiddle*) (*t*). And it has been expressly decided that, in support of a charge of rape or an offence of a similar class, a complaint, made at the first opportunity which reasonably offers, may be given in evidence, whether proof of non-consent is or is not a material element (*R. v. Osborne*) (*u*). The mere fact that the statement was made in answer to a question will not suffice to exclude it; but it will be inadmissible if elicited by questions of a leading and inducing or intimidating character (*ib.*). At the trial of a charge of indecent assault on two girls under thirteen, a statement made by one of the girls on the afternoon of the alleged assault, as to something said to have taken place three weeks before, was received in evidence, and the conviction accordingly quashed (*R. v. Pantaney*) (*x*).

Evidence of
character.

The prisoner may show by independent evidence that the prosecutrix is of generally immoral character, though, if she deny having had connection with particular named individuals, the latter cannot be called to contradict her. It seems, however, that if she deny that she has on previous occasions had connection with the prisoner, evidence may be tendered to prove such previous intercourse (*R. v. Riley*) (*y*). And the credit of the prosecutrix,

(*s*) [1896] 2 Q. B. 167; 74 L. T. 730; 65 L. J. M. C. 195; 44 W. R. 654; 60 J. P. 536.

(*t*) (1899) 19 Cox, 77.

(*u*) [1905] 1 K. B. 551; 74 L. J. K. B. 311; 92 L. T. 393; 53 W. R. 494; 69 J. P. 189; 21 T. L. R. 288.

(*x*) (1907) 71 J. P. 101.

(*y*) (1887) 18 Q. B. D. 481; 56 L. J. M. C. 52; 56 L. T. N. S. 371; 35 W. R. 382.

as that of any other witness, may be impeached by the testimony of witnesses who state generally that from their knowledge of her reputation they do not regard her evidence as worthy of credit (cf. Stephen's "Digest of Evidence," 7th edit., p. 149).

If the accused is under fourteen years of age he cannot be convicted, inasmuch as a boy under that age is presumed to be incapable of committing the offence. Nor can the boy be convicted of an assault with intent to commit a rape; though he might possibly be punished as a principal in the second degree (*ante*, pp. 150, 365); and as to *indecent assault*, see *ante*, p. 287.

Boys under fourteen.

See also CHILDREN, DEFILEMENT OF, *ante*, p. 364.

RECEIVERS.

Any person who *receives* any chattel, money, or other property whatsoever, the stealing, obtaining, embezzling, or disposing of which is a FELONY, *either at common law or by virtue of the Larceny Act, 1861, knowing the same to have been feloniously stolen*, obtained, embezzled, or disposed of, is himself guilty of *felony*. [Penal servitude for fourteen years.] (24 & 25 Vict. c. 96, s. 91.)

Receiving goods obtained by *felony* at common law or under Larceny Act.

See LARCENY, pp. 664—667; and EMBEZZLEMENT, p. 437.

A man could not be convicted of *feloniously* receiving goods stolen by one of two or more co-partners or co-owners, because the crime committed by the partner or co-owner is not an offence *at common law or under the Larceny Act* (*ante*, p. 656); though the circumstances may be such as to justify his conviction for a common law misdemeanour (*R. v. Smith*) (z). The receipt of stolen goods is, *at the common law*, a misdemeanour punishable with fine and imprisonment (cf. *R. v. Garland*) (zz).

Any person who *receives* any chattel, money, or other property whatsoever, the stealing, obtaining, converting, or disposing of which is a *misdemeanour* under the Larceny Act, 1861, *knowing the same to have been unlawfully stolen*, obtained, converted, or disposed of, is himself guilty of a *misdemeanour*. [Penal servitude for seven years.] (*Ib.* s. 95.)

Receiving goods obtained by a *misdemeanour* under the Larceny Act.

See AGENTS, p. 242; DOGS, p. 411; FALSE PRETENCES, p. 464; FISHING, p. 472; TRUSTEES, p. 914.

(z) (1870) L. R. 1 C. C. R. 266; 34 J. P. 484.

(zz) (1909) 26 T. L. R. 130.

Summary trial of a receiver.

A receiver may be tried *summarily* under certain conditions as to the value of the property received, the age of the accused, &c., which are set forth *ante*, pp. 134—137.

It is not necessary that the principal offender should have been previously convicted in order to render the receiver amenable to justice.

Venue.

These offences are triable in the place where the accused has or has had any of the property in his possession, *or* where the property was actually received, *or* where the principal offender might himself be tried (*ib.* s. 96; see *ante*, p. 7).

Receipt or possession of property stolen abroad.

A receiver of property, which has been stolen, obtained, extorted, &c., *outside the United Kingdom* under such circumstances that, if the act had been committed in the United Kingdom, the person committing it would have been guilty of an *indictable offence*, may be indicted in any county or place in which he has, or has had, the property. The maximum punishment for the felony or misdemeanour (as the case may be) is seven years' penal servitude (59 & 60 Vict. c. 52).

Receiving goods obtained by offence punishable *summarily* under the Larceny Act.

If the stealing or taking of property is, by the Larceny Act, *punishable on summary conviction*, any person who receives such property, knowing the same to have been unlawfully come by, commits an offence, and is *liable, on conviction, to the same forfeiture and punishment as that to which the person stealing or taking such property is made liable by the Act* (24 & 25 Vict. c. 96, s. 97).

See LARCENY, pp. 660—663; DOGS, p. 410; FISHING, p. 472.

As to apprehension without warrant, see *ante*, pp. 47—49; and as to the issue of a search warrant, see *ante*, p. 197.

Meaning of "receiving."

To constitute a "receipt" it must be shown that the accused had some *control*, entire or joint, over the goods; and if the stolen goods have got back into the possession of the owner before reaching the receiver, the latter cannot be convicted for receiving; as, *e.g.*, where the goods have been returned to the thief with the object of detecting the receiver (*R. v. Schmidt* (a); *R. v. Hancock* (b)). And see *R. v. Villensky* (bb).

(a) (1866) L. R. 1 C. C. R. 15.

(b) (1878) 38 L. T. 787; 14 Cox, 119; 42 J. P. 675.

(bb) [1892] 2 Q. B. 597; 61 L. J. 218; 56 J. P. 825.

A husband may be convicted of receiving goods stolen by his wife; but, if goods are "received" by the wife, the husband does not become responsible by mere passive acquiescence, as, *e.g.*, where the jury found that he "adopted his wife's receipt" without any finding as to his having taken any active step in the matter (*R. v. Dring*) (*c*). Even since 1882, where an *adulterer* received from the wife goods which had been wrongfully taken by her from her husband on leaving his house, the adulterer was held not liable to be convicted of *feloniously* "receiving" (*R. v. Streeter*) (*d*); though, as we have seen, if the adulterer had taken part in carrying off the goods, he could undoubtedly have been convicted of theft (*cf. ante*, p. 564). The stealing by a wife of her husband's property does not amount to felony, *either at the common law or by virtue of the Larceny Act, 1861*, so that the "receiving" of such property is not a felony within the meaning of s. 91 of that Act (*ante*, p. 871). When, however, such property is so carried off by a wife leaving or deserting her husband, her act is now made a felony by the statute of 1882 (*ante*, p. 563); and the receiving of the property so carried off has been held to amount to a misdemeanour at common law (*R. v. Payne*) (*e*). "The decisions in *R. v. Smith* (*f*) and *R. v. Streeter* (*g*) turned," said *Alverstone*, C.J., "upon the express words of s. 91 of the Act of 1861" (*ib.*; *cf. ante*, p. 871).

Husband and wife.

Receipt by adulterer.

To support this charge, the evidence of the thief would, of course, require corroboration (*ante*, p. 152); and "the mere fact that stolen goods were found upon the alleged receiver's premises on the day of the theft is not sufficient to confirm the evidence of the thief so as to make it proper to convict" (Archbold's "Criminal Practice," 23rd edit., p. 550, citing *R. v. Pratt*) (*h*). A conviction was quashed where it appeared that, a third person having stolen some property, the appellant's wife disposed of part of it independently of the appellant,

Evidence.

(*c*) (1857) D. & B. 329.

(*d*) [1900] 2 Q. B. 601; 64 J. P. 537; 69 L. J. Q. B. 915.

(*e*) [1906] 1 K. B. 97; 75 L. J. K. B. 114; 94 L. T. 288; 54 W. R. 200; 70 J. P. 28; 22 T. L. R. 126.

(*f*) *Ante*, p. 871.

(*g*) *Supra*.

(*h*) (1865) 4 F. & F. 315.

Receivers—
contd.

who, however, afterwards knew that the property had been placed on the roof of his house. The appellant gave no information as, having been previously convicted, he was afraid to do so (*R. v. Orris*) (*hh*). Where proceedings are taken against any person as a receiver, evidence may be given at any stage of the proceedings that, at the time when he was found in possession of the stolen property, there was also found in his possession other property stolen during the preceding twelve months; i.e., the twelve months preceding the commencement of the proceedings against the accused (*R. v. Harding*) (*i*). Such evidence is relevant, and may be taken into consideration for the purpose of proving that he knew the property to which the charge relates to have been stolen; and see *R. v. Drage* (*ii*); *R. v. Carter* (*k*). Evidence may, too, be given, under certain conditions and for a similar purpose, of a previous conviction (within five years) of any offence involving fraud or dishonesty (34 & 35 Vict. c. 112, s. 19).

But seven days' previous notice in writing must be given of the intention to make use of such conviction (34 & 35 Vict. c. 112, s. 19). As to the cross-examination of the accused in relation to these matters, see *ante*, p. 175, and 61 & 62 Vict. c. 36, s. 1 (*f*), (*i*.), Appendix, p. 1074.

P. 1074.

REFORMATORY SCHOOLS.

Breach of
rules.

As to the making of orders directing children to be detained in reformatory schools, see *ante*, p. 189.

If an offender ordered to be detained in a certified reformatory is guilty of a "serious and wilful breach" of the rules of the school, or of inciting other inmates to such a breach, he is liable on summary conviction to have his period of detention increased by a period not exceeding six months, or (if of the age of sixteen) to be imprisoned, with or without hard labour, for a term not exceeding three months (8 Edw. 7, c. 67, s. 71 (*i*)). At the expiration of his imprisonment, the offender will be detained for a period equal to that which

(*hh*) (1908) 73 J. P. 15.

(*i*) (1909) 53 S. J. 762.

(*ii*) (1878) 14 Cox, C. C. 85.

(*k*) (1884) 12 Q. B. D. 522; 53 L. J. M. C. 96; 33 W. R. 663.

remained unexpired at the time he was sent to prison; and this may take place notwithstanding that the period as so increased extends beyond the statutory limits of detention (*ib. s. 71 (i.) (iii.)*).

So, too, if an offender *escapes* from the school he may (at any time before the expiration of his period of detention) be apprehended without warrant and brought before a court of summary jurisdiction for the place where he is found or where the school is situate (*ib. s. 72 (i.)*). The offender may be punished as though he had been guilty of a "breach of the rules"; and, in computing the time during which he is liable to be detained, the time during which he was absent, including the time (if any) during which he was imprisoned, is not to be reckoned as part of the period of detention, although the increased period would exceed the statutory limit (*ib. s. 72 (i.) (iii.) (v.)*). These enactments apply where an offender "on licence" escapes or refuses to return; and, on revocation or forfeiture of the licence, there is provision, in case of a failure to return, for summoning a parent or guardian (after information on oath) to produce the offender, under a penalty of 1*l.* (*ib. s. 67*).

Escape from school.

Revocation of licence.

If any person (*a*) knowingly assists or induces, directly or indirectly, an offender to escape from the school or from any one with whom he is placed out on licence, or (*β*) knowingly harbours or conceals an offender who has so escaped, or prevents him from returning, or knowingly assists in so doing, he commits an OFFENCE (*ib. s. 72 (vi.)*).

Aiding escape, or harbouring escaped offender.

PENALTY.—FINE, not exceeding 20*l.*, recoverable by distress, and, in default, imprisonment, *without* hard labour, according to scale (p. 111); or IMPRISONMENT, with or without hard labour, for not more than TWO MONTHS.

In case of breach of rules or escape, an offender over sixteen may be sent to a "Borstal Institution" for not less than one nor more than three years (8 Edw. 7, c. 59, s. 2).

Committal to Borstal Institution.

RIOT.

If *three* or more persons, either with or without common cause or quarrel, but *in execution of a common purpose*, commit *any unlawful act of violence* in company, or even *any lawful act* (such as abating a nuisance) *in a violent and tumultuous manner*, they are guilty of the

Riot.

common law misdemeanour of taking part in a riot, and liable on indictment to fine and imprisonment.

In order to constitute a riot, there must exist an intent on the part of those present to help one another by force, if necessary, against any one who may oppose them in the execution of their common purpose; and, furthermore, violence must be used not merely, *e.g.*, in demolishing a building, but displayed in such a manner as to alarm at least one person of reasonable courage and firmness (*Field v. Receiver for the Metropolitan Police District*) (l).

Unlawful
assembly.

The mere meeting of three or more persons with a view to the performance of an unlawful act, or "under circumstances of terror" inherent either in their object or mode of assembling (although no overt act of violence be in fact undertaken), is an UNLAWFUL ASSEMBLY. "A meeting which attempts to carry out any common purpose, lawful or unlawful, in such a manner as to give other persons reason to fear a disturbance of the peace, is an unlawful assembly" (per *Charles, J.*, in *R. v. Graham*) (m). But a procession of persons through the streets does not of itself create an unlawful assembly, though it may be likely to arouse much opposition to its progress. If, though the procession was lawful, those taking part in it intended to meet force by force, it would, no doubt, constitute an unlawful assembly; but the mere assemblage of peaceable persons is not unlawful because their appearance may be the signal for an outburst of violence on the part of other persons (*Beatty v. Gillbanks*) (n). An "unlawful assembly" is a common law misdemeanour punishable on indictment.

Affray.

The offence known as "affray" is a somewhat similar misdemeanour, and consists of violence exhibited in public, not amounting to a felony, and yet of such a character as to terrify the people. But mere words, however threatening, cannot constitute an "affray." The distinction between "riot" and "affray" rarely becomes of any practical importance; but it may be noted that,

(l) [1907] 2 K. B. 853; 76 L. J. K. B. 1015; 97 L. T. 639; 5 L. G. R. 1121; 23 T. L. R. 736; 71 J. P. 494.

(m) (1888) 16 Cox, 420.

(n) (1882) 9 Q. B. D. 308; 51 L. J. M. C. 117; 31 W. R. 275; 46 J. P. 789.

if disturbance suddenly arose among persons lawfully assembled in a public place (*e.g.*, at a market or fair), this would, in the first instance, be a mere "affray," because there would exist no *common purpose* of executing any violent or unlawful act. But, if the crowd were to form into rival parties and a faction fight ensue, the affray might then become a "riot," as there would have come into existence "an intent mutually" to "assist one another" (see Hawkins' "Pleas of the Crown"; Wise on "Riots," &c.).

In case of riot or affray, or other indictable disturbance of the public peace, instead of committing the defendant for trial, the justices may bind him over to keep the peace, but he cannot be required to pay costs. As to the power of apprehension without warrant, see *ante*, p. 49.

Binding over
to keep the
peace.

If persons, riotously and tumultuously assembled to the disturbance of the public peace, unlawfully and with force *demolish, pull down, or destroy*, or begin to demolish, pull down, or destroy, any church, house, outhouse, warehouse, mill, &c., or any place used in farming land, or any machinery connected with manufacture or mining, &c., each person is guilty of *felony*. [Penal servitude for life; triable only at assizes.] (24 & 25 Vict. c. 97, s. 11.)

Riotously
destroying
buildings, &c.

So, too, if, under like circumstances, the buildings, &c., are *injured or damaged*, each person is guilty of a *misdemeanour* punishable with penal servitude for seven years (*ib.* s. 12).

Riotously
damaging
buildings, &c

Any person found committing either of these statutory offences may be apprehended without warrant by a constable or by the owner of the injured property (*ib.* s. 61).

The Riot Act is only applicable in cases where persons to the number of *twelve or more* are unlawfully, riotously, and tumultuously assembled to the disturbance of the public peace (1 Geo. 1, stat. 2, c. 5).

The Riot Act.

Whenever this is the case, any justice, sheriff of the county or his under-sheriff, or mayor of a town may make proclamation in the form given below; and any persons who, to the above number, presume unlawfully and tumultuously to remain together for the space of one hour after this warning, are guilty of *felony*, and liable under the original enactment to death, and at

present to penal servitude for life. This felony is triable at *assizes* only, and prosecution must be commenced within *twelve months*.

Every justice, be it observed, is *required*, on knowledge of any unlawful and tumultuous assembly within his jurisdiction, to "resort to the place," and there, among the rioters, or as near to them as he can safely come, after commanding silence, openly and with loud voice to pronounce these words:—

Proclamation.

"Silence while Proclamation is making!" "PROCLAMATION.—Our sovereign [Lord the King] chargeth and commandeth all persons being assembled immediately to disperse themselves, and peaceably depart to their habitations, or to their lawful business, upon the pains contained in the Act made in the first year of King George the First, for preventing tumults and riotous assemblies. God save the [King]!" The omission of the last four words would be a fatal error, as the proclamation must be read accurately (see *R. v. Child* (o) and *R. v. Woolcock* (p)).

Any one obstructing the making of this proclamation (which is popularly known as "reading the Riot Act") is guilty of felony; and any persons, continuing assembled with knowledge that it would have been read but for such hindrance, are liable as though it had been read. Indemnity is, by the Act, extended to the justice in case any of the mob be maimed or killed in the endeavour to apprehend or disperse them. In extreme cases, the presence of a military force may be obtained upon written application. The regulations relating to the duties of soldiers called on to aid the civil power in the suppression of riot are extracted in Appendix D of the Circulars, &c., issued by the Home Office in November, 1907. See, too, Reg. for *Territorial Force*, p. 36, and 38 Sol. J. 106.

"It has been imagined, because the law allows an hour for the dispersion of a mob to whom the Riot Act has been read by the magistrate, the further to support the civil authority, that during that period of time the civil power and the magistracy are disarmed. . . . No such

(o) (1830) 4 C. & P. 442.

(p) (1833) 5 C. & P. 516.

meaning was within the view of the legislature. . . . Riot—*contd.*
 The civil magistrates are left in possession of the powers which the law had given them before" (per Lord *Loughborough*, *R. v. Gordon*) (*q*). To justify the exercise of military force in the prevention of serious outrage and damage it is not necessary to wait for the Proclamation to be read, much less to wait till one hour has expired after it has been read (King's Regulations, &c.: "Duties in Aid of the Civil Powers," No. 280).

And see INTOXICATING LIQUOR LAWS, *ante*, p. 619; SPECIAL CONSTABLES, *post*, p. 891; and SURETY OF THE PEACE, *post*, p. 896.

SHOPS REGULATION ACTS, 1892—1904.

Under the above Acts a *young person* is a person under Definitions.
the age of eighteen; and, if he or she appear to the court to be under that age, the onus is on the defendant to prove the contrary. The word *shop* means a retail or wholesale shop, market, stall, or warehouse in which assistants are employed for hire, and includes licensed public-houses and refreshment houses. A high-class residential hotel is within the definition as being a "licensed public-house" (*Savoy Hotel Co. v. London C. C.*) (*r*).

It is an OFFENCE punishable by a PENALTY of 1*l.*, Offences as to
 recoverable by *distress*, and in default imprisonment employment.
without hard labour, according to scale (p. 111) (55 & 56
 Vict. c. 62, ss. 3, 5): 55 & 56 Vict.
 c. 62.

(*a*) To employ a *young person* in or about a *shop* for a longer period than *seventy-four hours* in any one week. These hours are inclusive of meal times, and of the time occupied on the employer's business elsewhere than in the shop (*Collman v. Roberts*) (*s*).

(*β*) Knowingly to employ in or about a *shop* a *young person* who has been previously on the same day employed in any "factory or workshop" for the

(*q*) (1780) 21 St. Tr. 485.

(*r*) [1900] 1 Q. B. 665; 69 L. J. Q. B. 274; 82 L. T. 56; 64 J. P. 262.

(*s*) [1896] 1 Q. B. 457; 65 L. J. M. C. 63; 74 L. T. 198; 44 W. R. 445; 60 J. P. 184.

Offences as to
employment
—*contd.*

number of hours permitted by the Factory Acts, or to employ such person for a longer period than would (together with the time during which he has been so previously employed) complete such number of hours.

A PENALTY is recoverable in respect of *each* person so employed (*ib.* s. 5). An innocent employer, who has used due diligence to observe the Act, may secure exemption from fine by bringing guilt home to the actual offender (*ib.* s. 6). For certain *exemptions* from penalties under the Acts, see *post*, p. 881.

By s. 31 (iv.) of the Factory and Workshop Act, 1901, it is provided that if a *woman* or *young person* is employed by the occupier of a *factory* or *workshop* on the same day both in the *factory*, &c., and in a *shop*, then the *whole time* of employment must not exceed the number of hours permitted for employment in the factory or workshop on that day (*cf. ante*, p. 461).

Failing to
exhibit
notice.

It is, too, an OFFENCE punishable with a penalty of 2*l.*, recoverable as above, for an employer to fail to keep exhibited in a conspicuous place in the shop a notice referring to the provisions of the Act and *stating the number of hours in the week* during which a young person may lawfully be employed therein (55 & 56 Vict. c. 62, s. 4; 58 Vict. c. 5).

A newspaper stall, consisting of a board laid on trestles, to which a boy is sent for a few hours daily to sell papers at a country station, is not a “shop” within these sections, and the notice need not be there exhibited (*Smith v. Kyle*) (*t.*).

Seats for Shop
Assistants
Act, 1899 (62
& 63 VICT.
c. 21).

In all the rooms of a shop or other premises (where goods are actually retailed to the public) in which *female assistants* are employed for the retailing of goods to the public, the employer must *provide seats* behind the counter, or in such other position as may be suitable for the purpose. Any person failing to provide such seats in the proportion of not less than *one seat* to every *three female assistants* employed in each room is liable (s. 2) to a

PENALTY (for a *first* offence) of 3*l.*; and (for a *second*

(*t.*) [1902] 1 K. B. 286; 71 L. J. K. B. 16; 85 L. T. 428; 66 J. P. 101.

or subsequent offence) of not less than 1*l.* and not exceeding 5*l.* The fines are recoverable by *distress*, and, in default, imprisonment *without* hard labour according to scale (p. 111).

The Acts do not apply to persons employed wholly as domestic servants (55 & 56 Vict. c. 62, s. 10); and there is, too, an exemption in favour of members of the employer's family dwelling in the building, and of members of any one family so dwelling if they are the only persons employed (*ib.*). A page boy, engaged in a large hotel, who slept on the premises but was principally employed as a messenger, was held to be within the Act and not a "domestic servant" (*Savoy Hotel v. London C. C.*) (*u*).

Exemptions.

By an Act of 1904, a local authority, subject to confirmation by the Secretary of State, may make CLOSING ORDERS fixing the hours at which the shops (or any specified class of shops) are to be closed for serving customers throughout the whole (or any specified part) of their area. The Act applies to all premises where retail trade (including that of a tailor) is carried on, but the Act defines the scope of the order and excludes a number of specified trades from its operation. Customers in the shop at the closing hour may be served. The orders, when made and confirmed, are to have "the effect of an Act of Parliament."

Shop Hours
Act, 1904.
4 EDW. 7,
c. 31.

PENALTY for contravention of order : *First* offence, 1*l.* ; *Second* offence, 5*l.* ; *Third* offence, 20*l.*

The procedure under the Shops Regulation Acts is as under the Factory and Workshop Act, 1901, ss. 143—147, *ante*, pp. 455, 464, so that, *e.g.*, APPEAL lies to quarter sessions.

Procedure.

The council of a county or borough (and, in the City of London, the Common Council) may appoint *inspectors* to carry the Acts into execution, and ss. 119, 121, and 139 of the Factory and Workshops Act, 1901, will apply as though such inspectors were appointed under the last-named Act (55 & 56 Vict. c. 62, s. 8); *cf. ante*, p. 463.

Inspectors.

An Act of 1902 renders it an OFFENCE for an *employer* to make it a condition of employment that a *workman* shall (*a*) discontinue his membership of a registered

SHOP CLUBS
Act, 1902.

(*u*) *Ante*, p. 879.

"Thrift
Fund," or
"Shop Club,"

friendly society, or not become a member of a society other than the "shop club" or "thrift fund," or (β) join a "shop club" or "thrift fund," unless indeed it be registered and certified under the Act by the Registrar of Friendly Societies. "Shop club" or "thrift fund" means any club or society for providing benefits to workmen in connection with a *workshop, factory, dock, shop or warehouse* (2 Edw. 7, c. 21). The PENALTY is 5*l.* (recoverable by distress and imprisonment); or, for a second offence within one year, 20*l.* The definition clause of this Act is very inadequate.

SMOKING (JUVENILE).

This subject is dealt with in Part III. of the Children Act, 1908. "Cigarette" includes cut tobacco rolled up in paper, tobacco leaf, or other material in such form as to be capable of immediate use for smoking; and the Act applies to "smoking mixtures" intended as a substitute for tobacco in like manner as it applies to cigarettes (8 Edw. 7, c. 67, s. 43).

Sale of
tobacco to
juveniles.

It is an OFFENCE for any person to *sell* to a juvenile *apparently* under the age of *sixteen* any cigarettes or cigarette papers, whether for his or her own use or not. This applies also to "tobacco" other than cigarettes, except that the *sale* of such tobacco to a person apparently under sixteen is not an offence if the vendor did not know and had no reason to believe that it was for the use of that person (*ib.* ss. 39, 43). With this exception, Part III. of the Act is declared to "apply to tobacco other than cigarettes in like manner as it applies to cigarettes" (*ib.* s. 43 (ii.)). It will be a sufficient defence to the charge to prove that the purchaser, although "apparently" under sixteen, was, *in fact*, of or over that age (*ib.* s. 123 (iv.)).

PENALTY.—*First offence*: FINE not exceeding 2*l.*, recoverable by *distress*, and, in default, imprisonment *without* hard labour according to scale (p. 111); *Second offence*: FINE not exceeding 5*l.*; *Third offence*: FINE not exceeding 10*l.*

Automatic
machines.

On complaint that an automatic machine for the sale of "cigarettes" is "being extensively used" by juveniles under *sixteen*, a court of summary jurisdiction may ORDER the owner of the machine, or the person on whose

premises it is kept, to take specified precautions to prevent the machine being so used, or, if necessary, to remove the machine within a specified time. The PENALTY for non-compliance is a FINE not exceeding 5*l.*, with a daily penalty of 1*l.* (*ib.* ss. 41, 43). Such fines are recoverable by *distress*, and, in default, imprisonment *without* hard labour, according to scale (p. 111); but any "person aggrieved" by the ORDER may *appeal against it* to quarter sessions (*ib.* s. 41).

As we have seen (*ante*, p. 882), the statute is declared to "apply to tobacco other than cigarettes in like manner as it applies to cigarettes" (s. 43 (ii.)).

If a *juvenile* apparently under sixteen is found smoking in a street or public place, it is "the duty of a constable and of a park keeper, being in uniform," to seize any "cigarettes, or cigarette papers," in the juvenile's possession. Such constable or park keeper is "authorized to search any boy so found smoking, but not a girl (*ib.* s. 40)." As we have seen, the statute is declared to "apply to tobacco other than cigarettes in like manner as it applies to cigarettes" (*ib.* s. 43 (ii.)). In this Act, "street" includes any highway and any public bridge, road, lane, footway, square, court, alley, or passage, whether a thoroughfare or not; while "public place" includes any public park, garden, sea beach, or railway station, and *any ground to which the public for the time being have or are permitted to have access, whether on payment or otherwise* (*ib.* s. 131).

Forfeiture of
juvenile's
tobacco.

The property seized must be disposed of, if seized by a constable, in such manner as the "police authority" within the Police Act, 1890 (or, in the City of London, the Common Council), may direct. If seized by a park keeper, as the authority or person by whom he was appointed may direct (*ib.* ss. 40, 43, 131).

The provisions as to sale and seizure do not apply where the person who buys, or is in possession, is at the time "*employed by a manufacturer of or dealer in tobacco, either wholesale or retail, for the purposes of his business*"; nor where the person to whom the articles are sold, or in whose possession they are found, is a "boy messenger in uniform in the employment of a messenger company and employed as such at the time" (*ib.* s. 42).

Exemptions.

SOLDIERS.

The provisions as to *recruiting* and the *attesting of recruits* and the offences in relation thereto, as set forth under the title *MILITARY, ante*, pp. 722, 723, are equally applicable to the regular forces, "reservists," and members of the "territorial force."

Using or giving false characters, &c., on enlistment.

If a man (when entering or enlisting or offering himself for entry or enlistment in the *naval, military, or marine* forces) makes use of any *forged or counterfeit* statement as to his *character or previous employment*, or any statement as to his character or previous employment which to his knowledge is *false in any material particular*, he commits an OFFENCE.

A like OFFENCE is committed by any person who makes a *written statement* as to the *character or previous employment* of any man, which he knows to be false in any material particular, if he *allows or intends it to be used* for the purpose of the entry or enlistment of that man into the *naval, military, or marine* forces.

PENALTY of 20*l.* recoverable by *distress*, and, in default, imprisonment *without* hard labour according to scale (p. 111) (6 Edw. 7, c. 5, s. 2).

Forgery of certificate of service or discharge.
Personation.

Any person commits an OFFENCE who (a) *forges* the *certificate of service or discharge* of a *seaman* (i.e., one who has served in the *naval* forces) or of a *soldier* (i.e., one who has served in the *military or marine* forces), or (b) *utters* such certificate knowing it to be forged, or (c) seeks to *obtain employment* or other advantage by means of a forged or counterfeit certificate, or (d) *personates* the holder of a certificate (*ib.* s. 1).

PENALTY.—*First Offence*: Fine of 20*l.*, and, in default of *distress*, imprisonment *without* hard labour according to scale; OR IMPRISONMENT, with or without hard labour, for ONE MONTH. *Second Offence*: IMPRISONMENT, with or without hard labour, for THREE MONTHS.

Exemption from civil process.

A soldier of the regular forces is not liable to be taken out of the service by process of any court of law or by order of any magistrate, nor can he be compelled to appear in person before any such court or magistrate, except—

(a) On account of a charge of or conviction for *crime*, including in that term any felony, misdemeanour, or

offence punishable with fine or imprisonment or greater punishment, but not including the offence of absenting himself from civil service, or breaking a contract; *or*

(β) On account of a debt or damages exceeding 30*l.* over and above all costs of suit ("Army Act" (*uu*), s. 144).

All proceedings in or incidental to any process or order in contravention of this provision are simply void; but any one having a cause of action against a soldier may, after due notice, proceed to judgment and have execution other than against the person, pay, arms, ammunition, clothing, or equipments of the defendant.

A soldier of the regular forces is *not liable to be punished for deserting or neglecting to maintain his wife or family, or for leaving them chargeable, unless the man is discharged by his commanding officer before the issue of the warrant for his arrest* ("Army Act," s. 145). But a soldier is *liable to contribute towards the maintenance of his wife and children, and also towards the maintenance of his bastard child, to the same extent as if he were not a soldier, although execution will not issue against his person, pay, clothing, or equipments.*

Liability to maintain family.

When an order is made upon a man, who is or subsequently becomes a soldier, for payment towards the cost of maintenance of his wife or child, or of any bastard child, a copy of such order must be sent to the general officer in charge of administration of the command in which the soldier is serving, who will then order a sum, not exceeding 6*d.* per day for a bastard (otherwise 1*s.* per day) in the case of a man not below the rank of sergeant, and not exceeding 3*d.* for a bastard (otherwise 6*d.*) in that of any other soldier, to be deducted from his pay and appropriated in liquidation of the liability (*ib.* s. 145; 4 Edw. 7, c. 5, s. 8). And see BASTARDY, *ante*, pp. 301, 305; and HUSBAND AND WIFE, *ante*, p. 559.

When any proceeding in a court of summary jurisdiction is instituted against a soldier for the purpose of enforcing any such liability, and such soldier is quartered outside the jurisdiction of the court, process must, as we

Service of process if soldier quartered outside the petty sessional division.

(*uu*) The Army Act of 1881, with subsequent amendments incorporated therein, is renewed annually as the "Army Act."

have seen in case of bastardy (*ante*, p. 301), be served on his commanding officer, and the service is not valid unless there be left with the document a sufficient sum to enable the soldier to attend the hearing and return to quarters. This sum is adjudged as costs incurred in obtaining the order, if an order be subsequently made against the soldier. No process, however, can be served upon a soldier after he is placed under orders for service beyond the seas ("Army Act," s. 145). If the soldier does not, in fact, attend the hearing, the officer will, as a rule, cause the sum to be refunded.

Buying, &c.,
regimental
necessaries or
the like from
a soldier ; or

Any person who *buys*, exchanges, takes in pawn, or receives *from a soldier, on any pretence whatever* (or who entices or assists a soldier to sell, exchange, pawn, or give away), any *arms, clothes, equipments, stores in regimental charge, military decorations, &c.*, is guilty of an OFFENCE, unless he proves that he acted in ignorance of the same being such property, or of the person with whom he dealt being a soldier ("Army Act," s. 156 (i.)). It will be observed that the onus of proving such ignorance lies on the defendant. Of course it would be a defence to show that the property was dealt with by order of a Secretary of State or some competent military authority.

Taking pen-
sioner's certifi-
cate in pledge.

The Army Act, s. 156 (ix.), brings within the penal provisions of this section any person who has or receives the identity *certificate* or life certificate of a man entitled to a military pension, or to reserve pay, or to a bounty, as a *pledge or security* for a debt, or with a view to obtain payment of a debt.

On a charge of a *second* offence, the defendant must, at the outset, be given the OPTION OF TRIAL BY JURY; as to the *procedure*, see *ante*, p. 65.

Penalty.

PENALTY.—*First offence*: FINE not exceeding 20*l.*, with treble the value of any property of which the offender has become possessed by means of his offence; and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111).

Second offence: As above, but the FINE must not be less than 5*l.*: and the offender may, *alternatively*, be IMPRISONED, with or without hard labour, for not more than SIX MONTHS.

Not account-
ing for the

Where any *such property* is found in the possession of *any person*, AND a court of summary jurisdiction have

reasonable ground for believing that the same either was stolen or was obtained or received in contravention of the section, AND such person fails to satisfy the court to the contrary, he is liable to a PENALTY of 5*l.*, recoverable as above ("Army Act," s. 156 (ii.)).

possession of
such property.

Any person *found committing* an offence against this section (*i.e.*, s. 156 of the "Army Act") may be apprehended without warrant, and brought, with the property, before a court of summary jurisdiction; and any person, to whom such property is offered and who has reasonable cause for suspicion, may, and, if he has the power, must, apprehend the person offering it (*ib.* s. 156 (iv.)).

Apprehension
without
warrant.

A person *found in possession* of military stores was arrested without warrant several days *after* their purchase by him. He was not, however, charged, under s. 156 (ii.), with not accounting satisfactorily for the *possession* of such property (*vide supra*), but was charged with and convicted of the offence of *purchasing* such stores under the *first* sub-section, *ante*, p. 886. The arrest was, nevertheless, held to be lawful (*Laws v. Read*) (x).

Where necessary, too, a search warrant may be issued by a court of summary jurisdiction authorizing, as in the case of stolen goods, seizure of the property and the bringing before the court of the person found in possession ("Army Act," s. 156 (v.)).

Search
warrant.

Before any portion of the regular forces can commence a march, in the course of which it counts upon assistance from the civil power, a "route" must be issued through the Secretary of State, signifying the forces to be moved, and signed by the proper officer. This "route," when delivered to any soldier of whatever rank by his commanding officer, is his sufficient authority for demanding billets, carriages, &c.

Route
marching.

The occupier of every "victualling-house" is liable to receive soldiers "on billet," the word "victualling-house" including all inns, hotels, livery stables, ale-houses, and establishments of persons selling wines, spirits, &c., by retail. This provision is, however, subject to various exceptions, which protect, amongst others, certain houses licensed for consumption "not on the

Billeting.

(x) (1894) 63 L. J. Q. B. 683; 10 R. 545.

premises," as, *e.g.*, houses kept by persons licensed only to sell beer or cider "off" ("Army Act," s. 104).

Every constable in charge at any place in the United Kingdom mentioned in the "route" is bound, under penalties, to billet, upon the occupiers of victualling-houses and other premises in that place liable to billet, such number of officers, soldiers, and horses as are mentioned in the "route," and stated to require quarters (*ib.* ss. 103, 109); and see s. 120, *post*, p. 889, as to the discharge of this duty by a *justice*.

The victualling-house keeper must receive his guests and entertain them with food, lodging, and attendance at a fixed rate of payment. Should he feel aggrieved at having what he may consider an unfair number of men or horses thrown upon his hospitality, he may apply to a justice, or, if the billet was prepared by a justice, to a court of summary jurisdiction, for redress (*ib.* s. 108). But he must not refuse or neglect to receive them, or to afford proper accommodation, *or* bribe the billeting constable, *or* pay out any soldier quartered upon him, on pain of a PENALTY of not less than 40s. nor more than 5*l.* (*ib.* s. 110). As to the accommodation to be provided, and the regulations as to billets, see the Second Schedule of the Act.

Impressment of carriages.

In the matter of *carriages* every justice, having jurisdiction in any place mentioned in a "route," is bound, at the request of the commanding officer, to issue his warrant requiring some constable to furnish, within a reasonable and specified time, such carriages, animals, and drivers as may be required for moving the regimental baggage and stores; and all persons having such carriages and animals fit for the purpose are bound to furnish them accordingly at a rate of remuneration fixed by the Third Schedule, but subject to revision by quarter sessions (*ib.* ss. 112, 113). As to obtaining redress for non-payment of the sum due or for ill-treatment, on the certificate of a court of summary jurisdiction, see *ib.* s. 119.

The police of any place may cause a list to be made out annually of persons liable to provide carriages and animals for the above purpose; and any one who considers that he has been improperly entered in such list, or that his liability is over-estimated, may make complaint to a *court of summary jurisdiction*, who may, after such

notice as may seem necessary to interested parties, ORDER the list to be amended (*ib.* s. 114 (i.) (ii.)).

In case of *emergency*, signified as such by a Secretary of State, a "requisition of emergency" may be made by a general or field officer, under which justices are bound to issue their warrants for the provision of carriages and horses of all descriptions, whether kept for draught or saddle, and also of boats and barges upon every canal or navigable river (*ib.* s. 115). In such a case of *emergency*, motor cars and other locomotives (whether for the purpose of carriage or haulage) may be impressed (9 Edw. 7, c. 3, s. 5 (i)).

Requisitions
of emergency.

Any person lawfully ordered by a constable to furnish a carriage, animal, or vessel, who *refuses or neglects* to provide the same, or *bribes* the constable or any officer or non-commissioned officer, or does any act whereby the order may be *hindered*, is liable to a PENALTY of not less than 2*l.*, nor more than 10*l.* (Army Act, s. 117).

Refusal to
furnish
carriage, &c.

Every justice, or member of "the police authority," if it seem necessary, *may*, and, in the absence of a constable, *must*, himself exercise the powers and perform the duties as regards billeting and impressment of carriages which are by the Act vested in or imposed upon constables (*ib.* s. 120). The "police authority" (elsewhere than in the Metropolitan Police district) is, in counties, the standing joint committee; while, in boroughs having a separate police force, it is the watch committee.

Justice must,
if necessary,
perform
constable's
duties.

As to the applicability of the billeting and impressment provisions to the AUXILIARY FORCES when subject to military law, see ss. 175, 181. "Regulars" can only be billeted on a "route" march; but "auxiliaries" may be billeted during the whole time of training, whether on a route march or not.

Billeting
"auxiliaries,"

If, in case of great emergency, the "reserves" have been called out on permanent service and any part of the *Territorial Force has been embodied*, men belonging either to that force or to the "regulars" may be billeted *elsewhere than in victualling houses, i.e., in public buildings, dwelling houses, warehouses, barns, and stables*. A general or field officer commanding in the district may issue a "requisition" to the chief officer of police to provide billets, references to "chief officers of police" being substituted for references to "constable" in the provisions

Billeting in
case of
"emergency."

of the Army Act already cited (*ante*, p. 888), while reference to "a court of summary jurisdiction" is substituted for the reference to "a justice of the peace" in s. 108 (vii.) (Army Act, s. 108A). (See 9 Edw. 7, c. 3, s. 7.)

Procedure
under the
"Army Act."

An offender may be tried by a court of summary jurisdiction where the offence was committed, or where he "may for the time being be." Proceedings must be commenced within six months. There is no power to mitigate fines or terms of imprisonment below any specified minimum: but, if the case is being dealt with in an occasional court-house (*cf. ante*, p. 12), either party may require an adjournment to the next practicable petty sessional court (Army Act, s. 166 (i.), (iv.)). Penalties are to be paid into the Exchequer, but the court may order a portion of the fine, not exceeding one half, to be paid to the informer (*ib.* s. 166 (vi., iii.)).

The justices' clerk, if required by an officer, must transmit to him a certificate setting forth the offence and the adjudication, for a fee of 3s. Such certificate is to be sufficient evidence of the conviction and sentence or of the acquittal, as the case may be (*ib.* s. 164). As to *evidence*, see s. 163 and *ante*, p. 408.

As to DESERTERS, see *ante*, p. 405, and as to claiming APPRENTICES who have enlisted, see *ante*, p. 268.

Wearing uni-
form without
authority.

As to wearing MILITARY UNIFORMS without authority, see 57 & 58 Vict. c. 45. The Act prescribes a PENALTY of 5*l.* for wearing "military" uniform without permission; while the wearing of "naval or military" uniform in such circumstances as to be likely to bring "contempt" upon it is punishable with a FINE of 10*l.*, or IMPRISONMENT for ONE MONTH.

As to interference with the execution of MILITARY MANŒUVRES, see 60 & 61 Vict. c. 43, s. 7.

SOLICITORS.

Pretending to
be a solicitor.

Any person who wilfully and falsely pretends to be or uses any name, title, addition, or description implying that he is qualified to act as a *solicitor*, or that he is recognised by the law as so qualified, commits an offence (37 & 38 Vict. c. 68, s. 12; S. L. Revision Act, 1893).

PENALTY.—FINE, not exceeding 10*l.*, and, in default of

distress, imprisonment, *without* hard labour, according to scale (p. 111).

Pretending to be a solicitor
—*contd.*

The court must decide as a question of fact whether or no the defendant falsely represented himself to be a solicitor (cf. *Incorporated Law Society v. Bedford*) (y).

No solicitor (unless appointed solicitor to a public department) is qualified to act without having a stamped certificate in force at the time.

It may be mentioned that, although a legal adviser cannot be permitted, during or after his employment, unless with his client's express consent, to disclose any communication made to him in his professional capacity, or any advice which he may have given, yet this privilege will not extend to a communication made to the counsel or solicitor with reference to any existing criminal design on the part of the client. And this would seem to be so although the solicitor, at the time of the communication, was unaware of the criminal design (*R. v. Cox & Railton*) (z).

Privileged communications.

SPECIAL CONSTABLES.

Any two justices, upon sworn information that any *tumult*, *riot*, or *felony* has taken place, or may be apprehended, within their division, &c., if of opinion that the ordinary police force is not sufficient for the maintenance of order, may nominate as many as they think fit of the householders or other persons residing in the place or neighbourhood (not being legally exempt) to act as SPECIAL CONSTABLES for such time as they may consider necessary (1 & 2 Will. 4, c. 41). Persons not resident in the division may be sworn in as special constables if they are willing to act (5 & 6 Will. 4, c. 43); but persons entitled to the parliamentary franchise cannot be required to act as special constables at an election for their district unless they are willing to do so (17 & 18 Vict. c. 102, s. 8).

Swearing in special constables.

Provision is made for defraying the expenses of special constables out of the county rate, or its equivalent, upon

(y) (1885) 49 J. P. 215.

(z) (1885) 14 Q. B. D. 153; 54 L. J. M. C. 41; 52 L. T. 25; 49 J. P. 374.

an order to that effect made by justices in special sessions (1 & 2 Will. 4, c. 41, s. 13).

Special constables in boroughs.

The appointment of special constables in *boroughs* is regulated by 45 & 46 Vict. c. 50, s. 196. Such constables are appointed at a special sessions held in October (*ante*, p. 15). Two or more justices may appoint, by precept signed by them, so many as they think fit of the inhabitants not legally exempt from service (cf. 5 & 6 Vict. c. 109, s. 6) to act in the borough; but the special constable cannot be called upon to act except under the warrant of a justice having jurisdiction in the borough. This warrant, moreover, must recite that, in the opinion of the justice, the ordinary police of the borough is, at the date of the warrant, insufficient to maintain the peace. No one entitled to vote at a parliamentary election is compellable to serve during the election.

Special constable refusing to act or to obey orders.

Any person who is appointed to act as special constable and, without reasonable excuse, refuses to be sworn in, *or* neglects to appear to take the oath, *or* neglects *or* refuses to serve, *or* disobeys orders given to him, is liable to a

PENALTY of 5*l.*, recoverable by *distress*, and, in default, imprisonment, with or without hard labour, according to scale (p. 111) (1 & 2 Will. 4, c. 41, ss. 7, 8).

The prosecution must be commenced *within two months* (*ib.* s. 15).

Assault on special constable.

The penalty for assaulting a special constable in the execution of his duty is 20*l.*, recoverable as above (*ib.* s. 11). But the offender is liable to such other punishment as persons are by law liable to for assaulting any constable in the execution of the duties of his office (*ib.*).

The prosecution must be commenced *within two months* (*ib.* s. 15). See, however, 34 & 35 Vict. c. 112, ss. 12, 17, and 48 & 49 Vict. c. 75, s. 2, cited *ante*, p. 285.

SUICIDE.

Attempt to commit suicide.

If two persons agree together to destroy themselves, and one of them effects his object, the survivor might be indicted for murder; but an attempt to commit suicide, although it is an attempt to commit a felony, is not an attempt to commit murder within 24 & 25 Vict. c. 100,

s. 15 (*R. v. Burgess*) (a). The crime is a common law misdemeanour, and, in case of an adult, can be tried only at quarter sessions or assizes; but it is common practice to allow the accused to be released from custody and handed over to the care of his friends or relatives, and, in some cases, to require sureties for his future good behaviour.

As to the allowance of costs in case the accused is not committed for trial, see *ante*, p. 131.

SUNDAY.

It is an OFFENCE for any tradesman, artificer, workman, labourer, or *other person whatsoever*, being of the age of fourteen years or upwards, to do or exercise any *worldly labour, business, or work of his ordinary calling* upon Sunday (works of charity and necessity excepted) (29 Car. 2, c. 7, s. 1). A “hairdresser” is not a tradesman, artificer, workman or labourer, nor is he a person *ejusdem generis* (*Palmer v. Snow*) (b); nor do the words of the statute extend to a “farmer” (*R. v. Silvester (or Cleworth)*) (c).

Tradesmen,
workmen, &c.,
exercising
calling on
Sunday.

The PENALTY is 5s., recoverable by *distress*, and in default, imprisonment, *without* hard labour, according to scale (p. 111). The Act does not extend to the dressing of meat, &c., in families, or in cookshops, victualling houses, and inns “for such as otherwise cannot be provided,” nor to hackney coachmen; and it has been held that a shop, where potatoes were fried and sold, alone or with fish, to the poorer classes, is a “cook’s shop” within the exception (*Bullen v. Ward*) (d).

A tradesman, &c., may be convicted although he did not attend personally at the shop (*Connor v. Quest*) (e). And, in *Billingham v. Menhinick* (ee), a married woman, who sold sweets as the *manager* of a shop belonging to

(a) (1862) L. & C. 161; 32 L. J. M. C. 55; 7 L. T. 472; 11 W. R. 96.

(b) [1900] 1 Q. B. 725; 69 L. J. Q. B. 356; 82 L. T. 199; 64 J. P. 342.

(c) (1864) 33 L. J. M. C. 79; 9 L. T. 682.

(d) (1905) 74 L. J. K. B. 916; 93 L. T. 439; 21 Cox, 28; 69 J. P. 422.

(e) (1906) 96 L. T. 28; 71 J. P. 62; 21 Cox, 345.

(ee) (1909) 73 J. P. 384.

her husband, was convicted. It was unsuccessfully contended that the defendant was not a tradeswoman or "other person" within the statute; and further that, as the husband had been already convicted of a similar offence committed on the same day in another shop, the conviction amounted to fining him more than once for an offence committed on the same day. On the second point *Crepps v. Durden* (*ante*, p. 113) was relied on, but *Alverstone*, C.J., observed: "Lord Mansfield was not there dealing with two different shops."

Crying goods or exposing them to sale on Sunday.

It is, too, an OFFENCE for *any person* on Sunday publicly to *cry or expose to sale* any wares, merchandise, goods or chattels whatsoever (29 Car. 2, c. 7, s. 1).

The PENALTY is forfeiture of the goods so cried or exposed to sale. But the Act does not extend to the crying of milk before 9 a.m. or after 4 p.m.

Drovers, waggoners, butchers, &c., travelling on Sunday.

It is, moreover, an offence for any drover, waggoner, butcher, higgler, &c., or his servant to travel or come into his inn or lodging upon Sunday, the PENALTY being 1*l.*, recoverable as above (*ib.* s. 2); and, also, for any person to use or travel with a boat, wherry, lighter, or barge on Sunday (except upon an extraordinary occasion to be allowed by a justice), the PENALTY being 5*s.*, recoverable similarly (*ib.*). But see the *Thames Act* (7 Geo. 4, c. lxxv.).

Procedure under 29 Car. 2, c. 7.

The information must be laid *within ten days* (s. 4), and *one* justice may convict; but proceedings cannot now be taken without the written consent of the *chief officer of police of the district* (*e*₃), or of two justices, or a stipendiary magistrate, and the consenting magistrate may not himself adjudicate (34 & 35 Vict. c. 87, s. 1). The consent must be given *in writing* before the information is laid (*Thorpe v. Priestnall*) (*f*).

Sunday pastimes.

An ancient statute (apparently unrepealed) prohibits persons from assembling *out of their own parishes* for any sport whatsoever on Sunday, or for *unlawful* exercises or pastimes even *in their own parishes*. The PENALTY is 3*s.* 4*d.* recoverable by distress and imprisonment, and it is to be paid for the use of the poor (1 Car. 1, c. 1). Butchers, moreover, are prohibited from selling

Butchers.

(*e*₃) *Not including an officer in temporary command of the police* (*R. v. Halkett*, [1910] 1 K. B. 50; 79 L. J. K. B. 12; 74 J. P. 12).

(*f*) [1897] 1 Q. B. 159; 66 L. J. Q. B. 248; 45 W. R. 223; 60 J. P. 821.

or killing "any victual" on Sunday under a PENALTY of 6s. 8d., which goes to the poor, though one-third may be given to the informer (3 Car. 1, c. 2).

As to BAKERS, see *ante*, p. 342 ; as to BILLIARDS, *ante* p. 331 ; as to KILLING GAME, *ante*, p. 503 ; as to PAWN-BROKERS, *ante*, p. 756.

No *judicial* act can be performed on a Sunday ; so that a summary conviction on that day would be bad on the face of it. Any *arrest* which might be made *without warrant* (*ante*, pp. 47—49) may be made as well upon Sunday as on any other day ; but it is enacted that "no person, upon the Lord's day, shall serve or execute any writ, process, warrant, order, judgment or decree (*except in cases of treason, felony or breach of the peace*)" (29 Car. 2, c. 7, s. 6). The exception was held to cover a warrant in respect of *any* breach of the peace, *whether actual or constructive*, as, *e.g.*, a warrant for conspiracy (*Rawlins v. Ellis*) (*g*). In that case *Alderson, B.*, is reported to have stated broadly that the statute of Charles II. "authorizes the arrest on a Sunday of all persons who have been guilty of *any indictable offence*." However that may be, by an Act passed two years after the decision, justices are now expressly empowered to issue on that day a *warrant for the apprehension* of any person charged with having committed any *indictable offence*, or a *search warrant* ; and this would seem to imply the power of receiving the necessary information, as well as authority to the constable to execute the warrant (11 & 12 Vict. c. 42, s. 4).

Performing
judicial acts
or executing
process on
Sunday.

Execution of
process on
Sunday.

P. 962.

In the absence of statutory prohibition, any *ministerial* (as distinguished from *judicial*) act may be performed on Sunday ; but no summons can be served nor other process executed upon that day except the warrants of arrest already referred to as the subject of express enactment.

In the computation of time—as where an act is required to be done within "three" days—Sunday is counted as one, unless it is expressly excluded.

SURETY OF THE PEACE OR FOR GOOD BEHAVIOUR.

By virtue of his commission, a justice may, at his discretion, bind over *to keep the peace* any person, other than

When justice
may require
surety of the
peace.

a peer, within his jurisdiction. Thus, he may exact this security of those "who in his presence make any affray or contend together with hot and angry words"; or he may require it *at the request of any subject* who has reasonable grounds to apprehend that another will do him, or his wife or child, any bodily injury. It is not necessary that there should be ground for believing that the person complained of intends *himself* to do the injury: it will be sufficient if there is reason to apprehend that he will procure others to do it. It is not enough, however, to prove the use of language calculated to induce others to injure the complainant, unless the magistrate is satisfied that the defendant used the words in question with the intention of so inducing injury to the complainant. But the threat need not necessarily be a threat to inflict injury *in any event*: it will be sufficient to support an application if it be proved that the defendant threatened to inflict the injury in case the defendant should afterwards do something which he had a legal right to do (*R. v. Mallinson*) (h).

See, too, *R. v. Little and Dunning (Ex parte Wise)* (hh), a curious case in which the apprehended danger had already passed before the recognizance was ordered.

When justice
may require
surety for
good
behaviour.

It is not very clear what are the precise limits of the power of justices as to binding persons over *to be of good behaviour*. Under the 34 Edward III. a justice may so bind "all them that be *not of good fame* wherever they be found," an expression which, as Blackstone observes, is "of so great latitude as leaves much to be determined by the discretion of the magistrate himself." It is undoubted that this security may be required of rioters, common breakers of the peace, those who abuse or insult officers of justice in the execution of their duty, and in certain cases of aggravated defamation. It has been exacted in cases of insults to magistrates from persons in court, the magistrate having no power to imprison for contempt of court; but, speaking generally, this course cannot be adopted for mere rash, quarrelsome, or insulting words unless they amount to a challenge, or directly tend to a breach of the peace. Nor can a defendant be

(h) (1850) 20 L. J. M. C. 33.

(hh) (1909) 26 T. L. R. 8; 74 J. P. 7.

put under sureties where the complainant is *not in fear*, but declares that an assault *by himself* is likely to result from a continuance of the defendant's behaviour (*Gateshead JJ. v. Phillips*)⁽ⁱ⁾. But the use of abusive or insulting language in public is made an offence by many local Acts, and is dealt with, in the metropolis, by 2 & 3 Vict. c. 47, s. 54 (xiii.), under which a PENALTY of 2*l.* may be imposed in respect of words calculated, or intended, to provoke a breach of the peace.

Recognizances of the peace are usually drawn so as to include good behaviour generally, but the recognizance cannot be enforced except upon *conviction* of the party bound for some offence which is in law a breach of the condition (see *ante*, p. 192).

Enforcement
of recogni-
zances.

The binding over of a person to keep the peace or to be of good behaviour is not to be regarded as a punishment, but as a precautionary measure; and, if the party complained of is already before the court, it does not appear to be essential that a formal complaint should be made (*Ex parte Davis*)^(k). But there is no power to direct the payment of *costs* unless the order is made on complaint under s. 25 of the SUMMARY JURISDICTION ACT, 1879 (*vide infra*).

Procedure.

Formerly the defendant was called upon by summons or warrant to show cause why he should not give security to keep the peace or be of good behaviour; but he was not allowed to contradict the allegations made against him, though he might show that the proceedings were taken from malicious motives, or explain anything ambiguous in the charge itself. It is now, however, expressly provided by the SUMMARY JURISDICTION ACT, 1879, s. 25 (*as to cases where the complainant is himself the person who is in fear*), as follows:—

P. 1039.

“The power of a court of summary jurisdiction, upon complaint of any person, to adjudge a person to enter into a recognizance and find sureties to keep the peace or to be of good behaviour towards such first-mentioned person, shall be exercised *by an ORDER upon complaint*, and the Summary Jurisdiction Acts shall apply accordingly, and the complainant and defendant and witnesses

Form of
Information,
post, p. 1229.

⁽ⁱ⁾ *Times* newspaper, 15th July, 1879; *L. T. News*, July 19th, 1879.
^(k) (1871) 24 *L. T.* 547; 35 *J. P.* 551.

Procedure—
contd.

may be called and examined and cross-examined, and the complainant and defendant shall be subject to costs, as in the case of any other complaint.” Appendix, p. 1039 : and see p. 1101 for Form of Order of Recognizance.

It is doubtful whether a justice is entitled to issue a warrant *in the first instance* ; but it is thought that, by virtue of his commission, he may do so, and this course is sometimes adopted where the case is of a serious character.

P. 1039.

The court usually exacts security for twelve months or any less period at its discretion, and may order the defendant, *in default* of compliance with the order, to be *imprisoned for a period not exceeding six months*. But if the court is *not a petty sessional court*, the imprisonment in default must *not exceed* FOURTEEN DAYS (42 & 43 Vict. c. 49, s. 25). The defendant will be placed in the second division unless he is specially directed to be placed in the first (*ante*, p. 201).

P. 1008.

A copy of the *minute of the order* must be served on the defendant before the issue of a warrant of commitment (11 & 12 Vict. c. 43, s. 17).

Recovery of
costs.

The costs will be levied by *distress*, and, in default, imprisonment, *without* hard labour, according to scale (p. 111), in case such costs are ordered to be paid *by a defendant* ; and the imprisonment may be directed to commence at the expiration of the term for default in entering into recognizances or finding sureties. As to costs ordered to be paid *by a complainant*, see *ante*, p. 117.

The clerk to the justices is not bound to make out the recognizances unless the person ordered to enter into the recognizances pays the fees therefor, or such fees are remitted.

Binding over
both parties.

If satisfied that threats, calculated to lead to a breach of the peace, have been used by any person then before them, justices may bind over such person although no formal charge may have been made against him ; as, *e.g.*, where the *complainant* on a summons for “ threats ” is bound over by justices on their own initiative (*R. v. Wilkins ; Ex parte John*) (*l*).

Licensing
Act, 1902, s. 3.

We have seen (*ante*, pp. 606—608) that, where a person is convicted of certain offences connected with drunkenness, the court may, in addition to or in substitution for

(*l*) [1907] 2 K. B. 380 ; 76 L. J. K. B. 722 96 L. T. 721 ; 71 J. P. 327.

any other penalty, order the defendant to enter into a recognizance, with or without sureties, to be of good behaviour. Such an order would appear to be enforceable under s. 34 (ii.) of the Summary Jurisdiction Act, 1879 (*post*, p. 1044), in which case the term of imprisonment in default of recognizances could not exceed two MONTHS. If, however, s. 25 of the Summary Jurisdiction Act, 1879, is applicable in the event of default in compliance with the order (as some consider to be the case), the maximum term of imprisonment would be SIX MONTHS (*ante*, p. 898).

The recognizances will be in such sum as the court may think reasonable, having regard to the circumstances of the case and the social position of the parties.

The recognizances.

It is usual, when two sureties are required, to bind the principal in twice the amount for which each surety is made liable. Where there is only one surety, he is generally bound in the same sum with his principal.

It is usual to require infants and married women to find security amongst their friends. This does not, however, seem to be absolutely necessary in the case of an infant, nor in the case of a married woman who is possessed of separate estate.

By infants or married women.

There is, moreover, provision made to enable a person, who has been committed for default of finding sureties, to apply for a *variation of the order*. By the SUMMARY JURISDICTION ACT, 1879, s. 26, it is enacted that "where a person has been committed to prison by a court of summary jurisdiction for default in finding sureties, *any petty sessional court for the same county, borough, or place*, may, on application made to them in manner directed by a rule made in pursuance of the Act, by him or by some one acting on his behalf, inquire into the case of the person so committed; and if, upon *new evidence* produced to such court, or proof of a *change of circumstances*, the court think, having regard to all the circumstances of the case, that it is just so to do, they may *reduce the amount* for which it is proposed that the sureties or surety should be bound, or *dispense with the sureties* or surety, or otherwise deal with the case as the court may think just." Appendix, pp. 1039, 1088.

Application to vary the order.

P. 1039.

The rule "made in pursuance of the Act" provides that the application shall be by summons calling upon

the complainant to show cause why the order should not be varied (Summary Jurisdiction Rules, 1886, r. 17); Appendix, p. 1088. And see Form No. 4, p. 1093.

Procedure
by defendant
who disputes
the validity of
the order.

The King's Bench Division will, if necessary, quash recognizances which have been taken illegally and irregularly. Moreover, the defendant, if dissatisfied with the order in point of law, may apply for a case to be stated for the opinion of a superior court; or the defendant, if in custody, may cause himself to be brought up upon a writ of *habeas corpus*. The question for the court will be not whether the justices exercised their discretion amiss, but whether the allegations upon which they proceeded were sufficient to give them jurisdiction (*R. v. Dunn* (m); *Lort v. Hutton* (n)); and *cp. ante*, p. 25.

Where the
case is one of
assault.

On a complaint disclosing an assault but asking for sureties only, it is not competent to justices to convict of an assault against the wish of the complainant (*R. v. Deny*) (o). But where the charge is one of assault, it is very usual, instead of proceeding to a conviction, to call upon the defendant to enter into recognizances, &c., and the same course may be taken even if the charge is formally dismissed (*Ex parte Davis*) (p).

SWEARING.

Penalties
for profane
cursing and
swearing.

Every day-labourer, or common soldier, or seaman who profanely curses or swears is liable to a PENALTY of 1s., which (except in certain boroughs, *cf. ante*, p. 204) goes to the poor of the parish.

If the offender is under the degree of a gentleman, but not a day-labourer, common soldier, or seaman, the PENALTY is 2s.

If the offender is a gentleman, or "person above the degree of a gentleman," the PENALTY is 5s. (19 Geo. 2, c. 21, s. 1).

For a *second* offence, the penalties are doubled; and for a *third* offence, trebled.

In default of *payment* of the penalty imposed, the

(m) (1840) 12 A. & E. 599; 10 L. J. M. C. 29.

(n) (1876) 45 L. J. M. C. 95; 34 L. T. 730; 40 J. P. 677.

(o) (1851) 20 L. J. M. C. 189; 15 Jur. 327; and see *ante*, p. 280.

(p) (1871) 24 L. T. 547; 35 J. P. 551.

offender may be imprisoned, with or without hard labour, for a term according to scale (p. 111), but not exceeding *ten days*. The penalty goes to the poor of the parish (s. 10). But as to appropriation of the penalty in *quarter-sessions* boroughs, see *ante*, p. 204.

Swearing—
contd.

Proceedings may be commenced by any person, on sworn information, *within eight days* (*ib.* ss. 4, 12); but a constable must arrest the offender if he be unknown and the offence be committed in the presence of the constable (*ib.* s. 3).

If a constable wilfully neglects his duty under the Act, he is liable to a PENALTY of 2*l.* recoverable by distress; and, in default of *distress*, imprisonment, with or without hard labour, according to scale (p. 111) (*ib.* s. 7).

One justice may convict under the Act, but as to his power of punishment, see *ante*, p. 12.

As to cumulative penalties, see *ante*, p. 114, and the case of *R. v. Scott*, there cited.

As to the use of profane or obscene language in urban and other districts to which the Town Police Clauses Act applies, see *ante*, p. 567.

THEATRES.

Beyond the jurisdiction of the Lord Chamberlain, application for a theatrical licence was formerly made to the justices of the division, district, or place; but, now, the power of licensing is transferred to the county council, who may, however, delegate their power to the justices in *petty sessions* who would have constituted the licensing authority prior to the passing of the Local Government Act, 1888 (51 & 52 Vict. c. 41, ss. 7, 28). The notice of application must be given to the justices' clerk by the actual and responsible manager of the building to be licensed, and countersigned by at least two justices of the division, district or place; and the licence may be granted at a (*q*) *special session* to be held within twenty-one days after the delivery of such notice, and of this session seven days' notice must be given to each justice (6 & 7 Vict. c. 68, ss. 5, 6). The licence

Licences for
the perform-
ance of stage
plays.

(*q*) The Act of 1888 would seem to obviate the necessity for summoning a *special session*.

should be under the hands and seals of at least four of the justices present, and should be signed and sealed in open court, and publicly read by the clerk. Justices are empowered, at a special session for granting licences, to make rules for insuring order and regulating the hours of entertainment (*ib.* s. 9), and to bind over the manager, with sureties, in heavy recognizances for their due observances (*ib.* s. 7). As to the character and validity of such rules cf. *R. v. Sheerness* (r).

Keeping a place WITHOUT LICENCE for performance of stage plays.

Any person who has or keeps any house or place of public resort for the public performance of stage plays, without due authority by letters patent, or by licence from the Lord Chamberlain or justices, commits an OFFENCE (6 & 7 Vict. c. 68, s. 2). The burden of proving the existence of such authority or licence lies on the accused (s. 17). See *Shelley v. Bethell* (s).

PENALTY.—FINE not exceeding 20*l.* per day, and, in default of distress, imprisonment, without hard labour, according to scale (p. 111). See s. 21, cited *infra*, as to appropriation of penalty.

FOR HIRE. acting or permitting performance in an unlicensed place.

So, too, any person who acts FOR HIRE (*i.e.*, who acts in a place where money is taken directly or indirectly for admission, or where distilled or exciseable liquor is sold, or, it may even be, who is paid for his services as an actor) in any play performed in any unlicensed place, or, who FOR HIRE causes or permits such a performance, is guilty of an OFFENCE (6 & 7 Vict. c. 68, ss. 11, 16). See *Tarling v. Fredericks* (t).

PENALTY.—FINE not exceeding 10*l.* per day, recoverable as above.

A PENALTY of 50*l.* may also be imposed, accompanied by forfeiture of the licence, in case a play is performed for hire before it has been allowed by the Lord Chamberlain, or after it has been prohibited (*ib.* s. 15).

After defraying expenses, the residue of any penalty goes to the Crown (s. 21).

Appeal.

On conviction for any of the above offences APPEAL lies to the quarter sessions (*ib.* s. 20).

Meaning of "stage play."

A stage play is defined to include tragedy, comedy,

(r) (1898) 62 J. P. 563 ; 14 T. L. R. 533.

(s) *Post*, p. 903.

(t) *Post*, p. 903.

farce, opera, burletta, interlude, melodrama, pantomime, or other entertainment of the stage; but the Act does not apply to a theatrical representation in a booth or show allowed by justices, or other persons having authority, to take place at a lawful fair or feast (*ib.* s. 23).

Meaning of
"stage play"
—*contd.*

A dialogue between two persons "in costume" was held to be a stage play (*Thorne v. Colson*) (*u*); and where the actions of persons performing beneath the stage were reflected by mirrors to the view of the spectators, the performance was held to be a stage play (*Day v. Simpson*) (*v*). But a "dagger-dance" is not sufficiently like the ordinary events or actions of human life as to constitute it necessarily a performance within the statute (*Wigan v. Strange*) (*x*).

If the performance takes place in a temporary structure such as a portable booth, or if the performers hire a room temporarily, proceedings should be instituted under s. 11 for performing in an unlicensed place and not under s. 2 for keeping a theatre without licence (*Tarling v. Fredericks*) (*y*); *R. v. Strugnell* (*z*). But where the defendant, after fitting up a room in his house as a theatre, allowed three performances to take place for a charitable purpose, the audience securing tickets of admission by making payments towards the funds of the charity, he was held to be liable under s. 2 (*Shelley v. Bethell*) (*a*).

Occasional
performances.

It will be noted, too, that private and unlicensed theatricals must not be indulged in, even among friends and for amusement merely, at any hotel or other place where *intoxicants* are sold (*ante*, p. 902).

Performance
on licensed
premises.

As to licences by the excise authorities to sell intoxicants in theatres, see 5 & 6 Will. 4, c. 39, s. 7; 35 & 36 Vict. c. 94, s. 72 (cf. *ante*, p. 616). The grant of a "stage" licence may be refused on the ground that the applicant declines to undertake not to seek an excise

Excise
licence.

(*u*) (1861) 3 L. T. 697; 25 J. P. 101.

(*v*) (1865) 34 L. J. M. C. 149; 12 L. T. 386; 13 W. R. 748.

(*w*) (1866) L. R. 1 C. P. 175; 35 L. J. M. C. 31; 29 J. P. 774.

(*y*) (1873) 28 L. T. 814; 38 J. P. 109.

(*z*) (1866) 35 L. J. M. C. 78; 13 L. T. 433.

(*a*) (1883) 12 Q. B. D. 11; 53 L. J. M. C. 16; 49 L. T. 779; 48 J. P. 244.

licence for the sale of intoxicants (*R. v. Yorks (W. R.) (b)*); and cf. *R. v. Sheerness (c)*).

Army Act.

The performance of stage plays may take place in "recreation rooms" managed under the authority of a Secretary of State or the Admiralty ("Army Act," s. 174A).

As to the closing of "theatre bars," see *ante*, p. 616.

THREATENING LETTERS.

Threatening
letters.

Every person is guilty of felony who—

- (a) *Maliciously sends* or delivers or directly or indirectly *causes to be received*, knowing the contents thereof, a letter or writing threatening to kill any person [Penal servitude for ten years] (24 & 25 Vict. c. 100, s. 16).
- (b) *Sends* or delivers, or directly or indirectly *causes to be received*, knowing the contents thereof, a letter or writing threatening (a) to burn or destroy any house or other building, or a rick or stack, or any grain or agricultural produce in or under a building, or any ship, or (β) to kill, maim, or wound any cattle [Penal servitude for ten years] (24 & 25 Vict. c. 97, s. 50).
- (c) *Sends* or delivers, or directly or indirectly *causes to be received*, knowing the contents thereof, a letter or writing demanding of any person *with menaces*, and without reasonable or probable cause, any property, chattel, money, valuable security, or other valuable thing [Penal servitude for life: triable only at assizes] (24 & 25 Vict. c. 96, s. 44).

Meaning of
"menace."

The "menaces" need not necessarily be threats to the person or property or to accuse of crime. It may be a sufficient menace to threaten to accuse the prosecutor of conduct not amounting to an offence against the criminal law, as, *e.g.*, a threat to disclose to the wife of the prosecutor alleged indecent behaviour on his part (*R. v. Tomlinson (d)*).

And see ACCUSATIONS OF CRIME, *ante*, p. 210.

(b) [1896] 2 Q. B. 386; 44 W. R. 650; 60 J. P. 550; 65 L. J. M. C. 136.

(c) *Ante*, p. 902.

(d) [1895] 1 Q. B. 706; 64 L. J. M. C. 97; 72 L. T. 155.

THRESHING MACHINES.

The "drums" and "feeding mouths" of these implements must be securely "fenced" so far as is reasonably practicable and consistent with their efficient working.

Offences as to unfenced threshing machines.

An OFFENCE is committed by any person who—

- (a) Permits a threshing machine (worked by steam or any motive power other than manual labour), belonging to him, or used for his service or benefit, to be worked whilst "unfenced"; or,
- (β) Being a foreman, engineer, or other person in charge of such machine, works or permits it to be worked whilst "unfenced"; or,
- (γ) Removes the guard or fence whilst the machine is working (41 & 42 Vict. c. 12, s. 1).

PENALTY.—FINE, not exceeding 5*l.*, and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111). Penalty.

As to offence (a), the owner or person for whose service or benefit the machine was used is to be deemed to have permitted it to be "unfenced" unless he shows that he took all reasonable precautions to ensure the observance of the Act (*ib.* s. 1).

A constable on reasonable suspicion may, at any time, enter premises to inspect a threshing machine (*ib.* s. 4).

TRADE BOARDS ACT, 1909.

Where a *minimum rate of wages* has been made *obligatory* under the Trade Boards Act, 1909, an *employer* must (where such rate is applicable) pay wages to the person employed at not less than that rate, clear of all deductions. If the employer fails to do so he commits an OFFENCE and is liable to a PENALTY not exceeding 20*l.*, and not exceeding 5*l.* for each day on which the offence is continued after conviction. The Court may also, *by the conviction*, adjudge payment (apparently recoverable with the penalty) of the sum appearing to be due on account of wages calculated at the minimum rate (9 Edw. 7, c. 22, s. 6).

Not paying wages in accordance with minimum rate.

The penalty is recoverable by *distress* and, in default, imprisonment, *without* hard labour, according to scale (p. 111).

It lies on the employer to prove by wages sheets or otherwise that he has not paid, or agreed to pay, at less than the minimum rate (*ib. s. 6 (iv.)*).

The Trade Board may, however, grant a special "permit" to a worker incapable, by reason of infirmity or physical injury, of earning the full rate (*ib. s. 6 (iii.)*).

Where a minimum rate has been *fixed* but is *not obligatory*, and an employer (in order to secure the contracts of a Government department or local authority or otherwise) has given *written notice* to the Trade Board that he is willing it should become *obligatory*, he will become liable to *penalties* as above (*ib. s. 7*). The *register* of such notices kept by the Trade Board is evidence of the matters stated therein, and a certified copy of an entry is admissible (*ib. s. 7 (ii.)*). Where there is a minimum time-rate but no minimum piece-rate, and persons are employed on piecework, an employer is to be *deemed* to pay wages *at less than the minimum rate* unless he shows that the rate paid "would yield, in the circumstances of the case, to an ordinary worker at least the same amount of money as the minimum time-rate" (*ib. s. 8*).

Persons
employed by
piecework
when time-
rate
only fixed.

Prevention of
evasion.

A *shopkeeper, dealer, or trader* "who by way of trade makes any arrangement express or implied with any worker in pursuance of which the worker performs any *work for which a minimum rate of wages has been fixed*," is *deemed* to be the employer; and "the net remuneration obtainable by the worker in respect of the work, after allowing for his necessary expenditure in connection with the work, shall be *deemed* to be wages" (*ib. s. 9*).

Obstruction
of officers ;
furnishing
false informa-
tion, &c.

Officials under the Act are empowered to require the production of and inspect wages sheets, records of payments to outworkers, &c., to inspect and copy lists of outworkers, to demand information as to names and addresses, and, at all reasonable times, to enter a factory, workshop, or place used for giving out work. If any person fails to produce documents, furnish information or means for entry or inspection, or hinders or molests an officer in the exercise of these powers, he commits an offence and is liable to a

PENALTY not exceeding 5*l.*, recoverable as above by *distress and imprisonment (ib. s. 15)*.

If any person *produces a wages sheet*, record of wages, or list of outworkers *knowing it to be false*, or furnishes

any information knowing it to be false, he commits an offence and is liable to a

PENALTY not exceeding 20*l.* recoverable as above, or to IMPRISONMENT, with hard labour, for not exceeding THREE MONTHS (*ib.*).

Provision is made to enable authorized officials to take proceedings in their own names (*ib.* s. 17 (i.)) ; and "to prosecute or conduct before a court of summary jurisdiction any proceedings arising under the Act" (*ib.* s. 17 (ii)).

Power of officials to prosecute.

An official must produce his certificate of appointment to a "person affected," but no summary remedy appears to be provided in case of default (*ib.* s. 16).

TRUCK ACTS.

The Truck Acts of 1831, 1887 and 1896 apply to all "workmen" as defined in the Employers and Workmen Act, 1875. That definition covers labourers, servants in husbandry, journeymen, artificers, handicraftsmen, miners, and all other persons engaged in manual labour, whether under twenty-one years of age or not, and whether the contract of employment be express or implied, a contract of service or a contract personally to execute any work or labour. But the Acts do not apply to domestic or menial servants (50 & 51 Vict. c. 46, s. 2). And, as to who are "menials," see *ante*, p. 444.

Application of the Acts.

In a recent case, women collected lace from factories and took it home to be clipped. These "clippers" were paid weekly, but they were not bound to clip the lace themselves and, indeed, might return the lace without having executed the work. Deductions having been made in respect of damaged lace, proceedings were taken under s. 2 of the Act of 1896 (*post*, p. 912); but it was held that the "clippers" were not within the Act as they were *not bound to execute any part of the work personally* (*Squire v. Midland Lace Co.*) (*e*).

Inspectors of factories and of mines are required to enforce the provisions of the Acts (50 & 51 Vict. c. 46, s. 13); but there seems no reason why proceedings should not be instituted by a private individual.

(*e*) [1905] 2 K. B. 448; 74 L. J. K. B. 614; 93 L. T. 29; 53 W. R. 653; 69 J. P. 257.

OFFENCES.

Subject to certain exceptions as regards medicines, medical attendance, education, food consumed on the premises, cottages to live in, and other allowances and privileges to servants in husbandry, fuel, hay or other provender for a horse, &c., *allowed in addition to money wages as a remuneration for services*, and subject also to exception as to certain other matters (*e.g.*, advances for relief in sickness, or as contributions to friendly societies, &c.), which, under a *written* agreement to that effect, may be legally supplied and charged against wages, it is provided that it shall be AN OFFENCE for an employer or his agent—

*Cf. Shop
Clubs Act,
1902, ante,
p. 881.*

- (a) To *make any contract* by which the whole or any part of a workman's wages is made payable *otherwise than in current coin* ; OR,
- (β) To enter into any contract whereby provision is made, directly or indirectly, respecting the place where, the manner in which, or the person with whom any part of the wages is to be laid out or expended ; OR,
- (γ) To *make payment* in respect of wages by delivering goods, or *otherwise than* by payment of the entire amount of wages *in current coin* of the realm ; OR,
- (δ) To withhold, on account of discount, &c., any portion of an advance to which the workman is entitled in anticipation of the regular period of payment ; OR,
- (ε) To impose conditions as to the mode in which wages are to be expended, or to dismiss a workman on account of the mode of such expenditure ; OR,
- (ζ) To make permitted deductions unless in strict accordance with the requirements of the statutes, or to make deductions for sharpening or repairing tools except under an express agreement not forming part of the agreement of hiring (1 & 2 Will. 4, c. 37, ss. 1, 2, 3, 23, 24; 50 & 51 Vict. c. 46, ss. 3, 4, 6, 7, 8, 11).

*And cf. Act of
1896, post,
p. 912.*

Audit of
deductions.

Where deductions are made for education or in respect of medicine, medical attendance, or tools, the employer commits a like OFFENCE unless, once at least in every year, he makes out a correct account and submits it to be audited by auditors appointed by the workmen (50 & 51 Vict. c. 46, s. 9).

“Any money or other thing had or contracted to be paid, delivered, or given as a recompense, reward, or remuneration for any labour done or to be done, whether within a certain time or to a certain amount, or for a time or an amount uncertain,” is to be deemed the “wages” of such labour; while any “agreement, understanding, device, contrivance, collusion or arrangement whatsoever on the subject of wages, whether written or oral, whether direct or indirect, to which the employer and artificer are parties or are assenting, or by which they are mutually bound to each other, or whether either of them shall have endeavoured to impose an obligation on the other” is to be deemed a “contract” (1 & 2 Will. 4, c. 37, s. 25).

Meaning of
“wages” and
“contract.”

By s. 10 of the Act of 1887 (unless the operation of the section is suspended in the particular place by Order in Council) the provisions as to the payment of wages are to apply to an artificer, who makes articles at his own home or otherwise (without the employment of any person under him except a member of his own family), as though he were a “workman” and the shopkeeper, or other person buying the articles, were the “employer.” The section, however, only applies to articles under the value of 5*l.* knitted or otherwise manufactured of wool, worsted, yarn, linen, cloth, cotton, leather, fur, silk or certain other specified materials. The price of an article is to be treated as wages earned within the seven days before it is received from the workman by the employer.

Artificer who
works at
home to be
paid in cash.

PENALTY.—*First offence*: FINE, not exceeding 10*l.*, and in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111).

Penalty.

Second offence.—FINE, not exceeding 20*l.*, nor less than 10*l.*, recoverable as above. But a conviction within *ten days* of the first is not, so far as the penalty is concerned, to be treated as a *second* conviction (1 & 2 Will. 4, c. 37, s. 10).

Third offence is an *indictable* misdemeanour, punishable by a FINE of 100*l.* But a conviction within *ten days* of the second is not to be treated as a third conviction (*ibid*).

The penalties are payable to the Exchequer; and may be levied by distress and sale of *partnership* property, although the defendant's co-partners may not be liable *in person* for the offence (*ib.* s. 13).

Disqualifi-
cation of
justice.

A person engaged in the same trade as an accused employer must not, as a justice, hear and determine the case (50 & 51 Vict. c. 46, s. 15).

Punishment
of actual
offender.

Where the offence has, in fact, been committed by some agent or other person, such agent or person is liable to the same penalty as if he were the employer; and, an employer, when charged, may exempt himself from penalty by laying an information against the actual offender, provided that he can prove that he himself had used due diligence and knew nothing of the matter (*ib.* s. 12).

Service of
summons.

A summons may be served in the usual way (*ante*, p. 43); or by leaving the duplicate or copy *at or upon the place of business* addressed to the defendant "in his right or assumed name"; or by leaving such duplicate or copy at the *residence* of the defendant, "being at or upon any such place as aforesaid" (*i.e.*, presumably, where the defendant resides on his business premises) (1 & 2 Will. 4, c. 37, s. 14).

Illustrations.

It has been held to be an offence within the Act to compel a weaver to accept a piece of cloth damaged by himself, the employer deducting from the amount of wages the value of the cloth if it had remained undamaged (*Smith v. Walton*) (*f*). And it has recently been decided by the House of Lords that the deduction from wages of the amount of certain damages, awarded by a court to be paid to the employer for breach of contract, is a violation of the requirement that the whole of the wages shall be paid in current coin of the realm (*Williams v. North's Navigation Collieries*) (*g*). Nothing may be deducted save what is expressly allowed by the statute, not even a debt lawfully due from the workman to his employer. But under the Acts in force *prior to the Truck Act, 1896*, the deduction from wages of *finer* for spoiled work was held to be a mere non-payment and not an offence (*Redgrave v. Kelly*) (*h*). And a forfeiture, in the nature of *liquidated damages* for a breach of rules, was held not to come within the Acts although deducted

(*f*) (1878) 3 C. P. D. 109; 47 L. J. M. C. 45; 42 J. P. 280.

(*g*) [1906] A. C. 136; 75 L. J. K. B. 334; 94 L. T. 447; 70 J. P. 217.

(*h*) (1889) 37 W. R. 543; 5 T. L. R. 477; 54 J. P. 70.

from the workman's wages (*Beetham v. Crewdson*) (i). The decision of the House of Lords would seem to show that, quite apart from the Act of 1896, such deductions are not permissible and give rise to a cause of action; but it is, perhaps, still open to question whether the mere deduction of a lawful debt constitutes an *offence* under these Acts.

It is, however, provided by the Truck Act, 1896 (59 & 60 Vict. c. 44), which came into force on January 1st, 1897, as follows:—

THE TRUCK
ACT, 1896.
59 & 60 Vict.
c. 44.

No employer of a *workman or shop assistant* shall make any contract for a deduction from the sum contracted to be paid to the workman, or for any payment by the workman, *for or in respect of a fine* unless—

Deductions or
payments in
respect of
finer.

- (a) The terms of the contract are contained in a *notice* so placed that it may be easily seen, read, and copied by any person affected; *or*, the contract is *in writing, and signed* by the employee; AND
- (β) The contract specifies the acts or omissions in respect of which the fine may be imposed, and the amount of the fine, or the particulars from which that amount may be ascertained; AND
- (γ) The fine is in respect of an act or omission likely to cause damage or loss to the employer, or hindrance to his business; AND
- (δ) The amount of the fine is fair and reasonable, having regard to all the circumstances of the case.

No fine shall be deducted or received except under such a contract, and after written particulars have, on each occasion, been supplied by the employer (s. 1).

Where a rule required workers to observe "good order and decorum" and certain women danced during the dinner hour, thereby raising a dust likely to damage the machines and materials, it was held that they might properly be fined in respect of "an act or omission likely to cause damage to the employer" (*Squire v. Bayer*) (k).

The employer must keep a REGISTER showing all deductions or payments in respect of *finer*, and specifying the amount and the nature of the act or omission in

Register of
finer.

(i) (1890) 55 J. P. 55; 6 T. L. R. 379.

(k) [1901] 2 K. B. 299; 70 L. J. K. B. 705; 85 L. T. 247; 49 W. R. 557; 65 J. P. 629.

Truck Act,
1896—*contd.*

Deductions or
payments in
respect of
*damaged
goods.*

respect of which the fine was imposed, under a PENALTY of 2*l.* (s. 6 (iii.) (iv.)).

No employer of a *workman* shall make any contract for a deduction from the sum contracted to be paid to the workman, or for any payment by the workman, for or in respect of *bad or negligent work, or injury to the materials* or other property of the employer, unless—

- (a) The terms are contained in a *notice* so placed as aforesaid (*ante*, p. 911); or, the contract is *in writing, and signed* by the workman; AND
- (β) The deduction or payment does not exceed the actual or estimated damage or loss occasioned by the act or omission of the workman, or of some person under his control, or for whom he has by the contract agreed to be responsible; AND
- (γ) The amount is fair and reasonable.

No deduction or payment shall be made except under such a contract, and after written particulars have, on each occasion, been supplied by the employer (s. 2).

Deductions or
payments in
respect of
materials.

No employer of a *workman* shall make any contract for a deduction or payment in respect of the *use or supply of materials, tools or machines, standing room, light, heat, or any other thing* to be done or provided by the employer in relation to the work, *unless*—

- (a) The terms are contained in a *notice* so placed as aforesaid (*ante*, p. 911); or, the contract is *in writing and signed* by the workman; AND
- (β) The deduction or payment does not exceed the actual or estimated cost, or a fair and reasonable rent or charge, as the case may be.

No deduction or payment shall be made except under such a contract, and after written particulars have, on each occasion, been supplied by the employer (s. 3).

Penalty.

If an employer enters into any contract, or makes any deduction, or receives any payments in violation of the above provisions of the Act of 1896, he becomes liable to a penalty as for an offence against the Truck Act, 1831 (*ante*, p. 909).

Production
of contract

The employer must, on the written demand of an inspector of factories or mines, *produce the contract*, or a copy, under a PENALTY of 2*l.* He must also, under a like penalty, give to the workman, or shop assistant, at the time of making the contract, and afterwards, if a

request be made for it, a copy of the contract, or of the notice containing its terms (s. 6).

As to the *exemption* of particular trades by order of the Home Secretary, see s. 9.

It must, too, be observed that the Acts cannot be evaded by making payments in coin upon an understanding that the money or part of it is to be forthwith returned to the employer for goods supplied or to be supplied (*Gould v. Haynes*) (l). But a payment in coin by an employer at the instance or with the authority of the employee is as much a payment to the employee as if current coin had been placed in his or her hands (*Hewlett v. Allen*) (m). And, in a more recent case, wages were paid in full but, at the time of payment, the workman received a slip of paper on which was written a sum equal to 2*d.* in the £ on the amount of wages, and the sum so indicated was then handed back by the workman. The system was intended to cover insurance premiums paid by the employer in respect of *his own statutory liability* for accidents, yet the court held that there had not been a payment "otherwise than in current coin of the realm" within s. 3 of the Act of 1831 (*Owner v. Hooper*) (n).

Evading the
Truck Acts.

It is also provided that no wages shall be paid to a workman at or within a public-house, beer-house, or place for the sale of any spirits, wine, cider, or other spirituous or fermented liquor, or in any office, garden, or place belonging thereto or occupied therewith, except by the resident owner or occupier to a workman *bonâ fide* employed by him. The PENALTY is 10*l.*, recoverable by *distress*, and, in default, imprisonment *without* hard labour, according to scale (p. 111); and, if the payment is made by an *agent*, the employer will be liable unless he can prove that he has taken all reasonable means for enforcing the Act (46 & 47 Vict. c. 31, s. 3). As to cases where the workman so paid is a *miner*, see 35 & 36 Vict. c. 77, s. 9, and 50 & 51 Vict. c. 58, s. 11.

Wages not to
be paid in
public-houses.

As to certain special provisions affecting workmen in

(l) (1890) 59 L. J. M. C. 9; 61 L. T. 732; 54 J. P. 405.

(m) [1894] A. C. 383; 63 L. J. Q. B. 608; 71 L. T. 94; 42 W. R. 670; 58 J. P. 700.

(n) (1903) 89 L. T. 130; 67 J. P. 406.

*Hosiery
Manufacture
(Wages) Act,
1875.*

the hosiery trade, see *Hosiery Manufacture (Wages) Act*, 1875 (37 & 38 Vict. c. 48), which imposes a penalty of 5*l.* in respect of the deduction of "any part of the wages for frame rent and standing or other charges" (s. 3). Cf. *Willis v. Thorp (nn)*.

TRUSTEES.

Frauds by
trustees.

Every person who, being a TRUSTEE of property for the use or benefit, wholly or partially, of some other person or for any public or charitable purpose, *with intent to defraud*, converts or appropriates it to his own use, or destroys or disposes of any part of the property for any purpose other than those prescribed by the terms of the trust, is guilty of a *misdemeanour*, triable at assizes only, and punishable with seven years' penal servitude (24 & 25 Vict. c. 96, s. 80).

No prosecution can be commenced without the sanction of the Attorney-General; and if civil proceedings have been commenced, the plaintiff cannot prosecute without the sanction of the court or judge before whom the proceedings were instituted or are pending (*ib.*).

Meaning of
"trustee."

The word *trustee* in the above-cited section means a trustee on some express trust created by some deed, will, or instrument in writing, including any person on whom such trust has devolved, and also an executor or administrator, or a person acting as liquidator in the winding up of companies, or in bankruptcy (*ib.* s. 1).

As to DIRECTORS, OFFICERS, MANAGERS, &c., of COMPANIES, see *ib.* ss. 81—84; and as to AGENTS, see *ante*, p. 242.

VACCINATION.

Requirements
as to vaccina-
tion and the
transmission
of certificates.

The *parent* of every child born in England is bound, *within six months* after its birth, to have it vaccinated, either by the public vaccinator or by some registered medical practitioner, unless he has procured exemption, by statutory declaration, as hereinafter mentioned.

The word "parent" here includes the father and the mother of a legitimate child, and the mother of an illegitimate one; and if by reason of the death, illness, absence, or inability of the parent, or for some other cause, another person has the *custody* of an unvaccinated

(nn) (1875) L. R. 10 Q. B. 383.

child born in England, that person must cause the child to be vaccinated within the prescribed period (30 & 31 Vict. c. 84, ss. 16, 35 : 34 & 35 Vict. c. 98, s. 4 ; 61 & 62 Vict. c. 49, s. 1 (i.)).

Requirements
as to vaccination and the
transmission
of certificates
—*contd.*

The public vaccinator of the district must, if the parent, &c., so requires, visit the home of the child for the purpose of vaccinating it; and, if vaccination does not take place within *four months* after birth, the public vaccinator, after at least *twenty-four hours'* notice to the parent, must visit the home of the child and *offer to vaccinate* it with glycerinated calf's lymph, or such other lymph as may be issued by the Local Government Board (61 & 62 Vict. c. 49, s. 1 (ii.) (iii.)). Where the child was *born* prior to the coming into operation of the Act last cited, it was held to be unnecessary to comply with these provisions before seeking a justices' ORDER to vaccinate under s. 31 of the Act of 1867 (*Pym v. Wilsher*) (o). And, whenever the child may have been born, it seems that on a prosecution for OFFENCE (a) (post, p. 917), it is not always necessary for the prosecution to prove that the public vaccinator has visited the home of the child and offered to vaccinate it (*Moore v. Keyte*) (p). The true effect of this decision is explained by *Alverstone*, C.J., in these terms: "When the magistrates have the case before them they must consider, *upon the point whether there is reasonable excuse shown*, whether there has or has not been a visit by the public vaccinator. But, *assuming no such point is raised*, it would be involving the parties in a useless and unnecessary expense if there should be required to be *formal proof* in every prosecution of those conditions *without which, of course, one cannot reasonably imagine that any prosecution would be commenced.*" And, if application be made for an ORDER under s. 31 of the Act of 1867, it is no answer to allege that the public vaccinator *failed to give notice* of his intended domiciliary visit (*Bowden v. Toll*) (q). But a failure to give such notice or to make such visit might well be material on the question of "reasonable excuse,"

The domiciliary visit.

(o) [1901] 2 K. B. 806 ; 70 L. J. K. B. 1031 ; 65 J. P. 755.

(p) [1902] 1 K. B. 768 ; 71 L. J. K. B. 454 ; 66 J. P. 499.

(q) (1901) 85 L. T. 486 ; 50 W. R. 208 ; 18 T. L. R. 22 ; 66 J. P.

if raised as a defence in a prosecution under s. 29 (*i.e.*, offence (a), *post*, p. 917).

In the event of the vaccination proving unsuccessful, the parent or other person having the custody of the child must cause it to be vaccinated again forthwith (30 & 31 Vict. c. 84, s. 17).

Where vaccination is successful.

In case the child is *successfully* vaccinated, and the operation has been performed by a *public vaccinator*, the latter must, *within seven days* after the success has been ascertained, transmit a certificate to that effect to the vaccination officer, and, if requested, deliver a duplicate of such certificate to the parent or other person having the custody of the child.

Should the successful operation have been performed by a medical practitioner who is *not a public vaccinator*, he must deliver to the parent, &c., a certificate of such successful vaccination, and, *within seven days* of the examination on which such certificate is founded, the parent, &c., must transmit the certificate to the vaccination officers (30 & 31 Vict. c. 84, ss. 21, 23; 34 & 35 Vict. c. 98, ss. 6, 7).

Where it is undesirable to vaccinate, or the child is insusceptible to vaccination.

If the public vaccinator or medical practitioner is of opinion that the child is not in a fit state to be successfully vaccinated, he must give a *certificate* to that effect; and this certificate must be renewed every two months until the child is fit for the operation. Where a parent was summoned (for offence (a) *post*, p. 917) in respect of a child *eleven months* old, and then, before the hearing, obtained a medical certificate that it would, *at that time*, be unsafe to vaccinate, owing to a complaint from which the child was suffering, this certificate was held to afford no defence (*Hinds v. Elsam*) (*r*). If, however, the child has been three times unsuccessfully vaccinated, and the public vaccinator or medical practitioner thinks it insusceptible of successful vaccination, or if the child has already had the small-pox, he must give a certificate to that effect (30 & 31 Vict. c. 84, ss. 18, 20). So, too, if the public vaccinator thinks that, owing to the condition of the home or the prevalence of infectious disease, it would be unsafe to vaccinate, he must give a certificate of postponement, and must, moreover, notify the medical

(s) *Ante*, p. 915.

based on a failure to comply with the requirements of the Act of 1898, in relation to the domiciliary visit, see the same case; and as to "reasonable excuse," based on *general* arguments against vaccination, see *Rutter v. Norton (t)*. See also *Hinds v. Elsam*, cited *ante*, p. 916.

Neglect to transmit certificate.

(b) For any public vaccinator, parent, &c., as the case may be, to neglect the transmission to the vaccination officer of the requisite certificate of (a) successful vaccination, or (β) unfitness for or insusceptibility to vaccination, within the seven days prescribed (*ib.* s. 30; 34 & 35 Vict. c. 98, s. 7).

Refusal to deliver duplicate or sign certificate.

(c) For a public vaccinator to refuse to deliver, upon request, a duplicate of such a certificate to the parent, &c., or for a medical practitioner to refuse to fill up and sign a certificate of successful vaccination (*ib.*).

On a charge of offence (a), the defendant, if the facts warrant it, may be convicted of omitting to transmit a requisite certificate (34 & 35 Vict. c. 98, s. 11).

Penalty.

PENALTY.—FINE, not exceeding 1*l.*; and in default of distress, imprisonment, as a *first class misdemeanant*, according to scale (p. 111). The penalties are apparently unappropriated (*post*, p. 1015); although Art. 29 (1) of the General Orders of the Local Government Board of October 18th, 1898, seems to treat them as though payable to the guardians (cf. Fry's *Law of Vaccination*, p. 100).

The wilful signing of a false certificate or duplicate is an *indictable* misdemeanour; and "inoculation" with small-pox is punishable *summarily* by imprisonment for one month, or by a penalty of 5*l.* (30 & 31 Vict. c. 84, ss. 30, 32; 34 & 35 Vict. c. 98, s. 7).

Justice's order to vaccinate.
(S. 31.)

Upon information in writing from an officer appointed by the guardians that any child under fourteen within the union or parish has not been successfully vaccinated, and that the parent, &c., has disregarded a notice to have the operation performed, a justice may summon such parent to appear *before him* with the child, and may, if he find that it has not been [successfully] vaccinated, nor already had small-pox, ORDER it to be vaccinated within a certain time (30 & 31 Vict. c. 84, s. 31).

Despite the explicit words of this section, the justice

who grants the summons need not, it seems, hear it nor sign the vaccination order; at any rate, no objection on this score will prevail on an application for a penalty in respect of a disobedience of the order (*Southcombe v. Yeovil Guardians*) (u).

Justice's
order to
vaccinate—
contd.

If the parent, &c., has been *convicted under s. 29* of the Act of 1867 (*i.e.*, of offence (a), *ante*, p. 917), proceedings cannot be taken against him for a *justice's order* in respect of the same child until it has reached the age of *four* years (61 & 62 Vict. c. 49, s. 4); but an application can be made for an order where the public vaccinator has failed to give notice of his intended visit, and a summons for offence (a) has been *dismissed* (*Bowden v. Toll*) (v). It is, however, provided that *no order* can be made on a person who has previously been convicted of *non-compliance with a similar order* relating to the same child (*ib.* s. 3).

Repeated
penalties.

The authority of the officer as vaccination officer must be proved. This may be done, *e.g.*, by the production of a minute-book containing a resolution empowering the officer to institute proceedings as cases arise. It is not necessary to show a *special* authority to prosecute in each individual case (*Bramble v. Low*) (x).

Evidence.

There is no statutory provision as to the mode of service of the notice to vaccinate; it is for the court to decide whether the notice, in fact, reached the parent or person having the custody of the child (*Holloway v. Coster*) (y); and the order may be made although the parent, &c., does not appear, and the child is not produced (*Reg. v. JJ. of Cinque Ports*) (z); *Dutton v. Atkins* (a). The non-production of the child is in itself an offence, rendering the parent liable to a penalty of 1l. (34 & 35 Vict. c. 98, s. 11).

The proceedings may be taken if either the child or its parent were within the parish or union at the time when the information was laid (*ib.*).

Costs may, of course, be ordered (*ante*, p. 115, and *R.*

(u) [1897] 1 Q. B. 343; 66 L. J. Q. B. 294; 76 L. T. 58; 61 J. P. 230.

(v) *Ante*, p. 915.

(x) [1897] 1 Q. B. 283; 66 L. J. Q. B. 243; 45 W. R. 366; 61 J. P. 168.

(y) *Post*, p. 920.

(z) (1886) 17 Q. B. D. 191; 55 L. J. M. C. 156.

(a) (1871) L. R. 6 Q. B. 373; 40 L. J. M. C. 157.

v. *Burrows*) (*b*); but any imprisonment in default of distress must be as a *first class misdemeanant*. The justices may state a special case (*ante*, p. 161; *Holloway v. Coster*) (*c*).

Disobedience
of order to
vaccinate.

In case the *order for vaccination is disobeyed*, the parent or person having custody of the child commits an OFFENCE, unless it be shown that the child is unfit to be vaccinated or insusceptible of vaccination. Proof that no certificate of vaccination, unfitness, or insusceptibility has been received by the vaccination officer is *prima facie* evidence that the order has not been obeyed, though the court might require further evidence (*Over v. Harwood*) (*d*).

P. 1008.

It is generally considered that proof must be given of service of the minute of the order on the defendant *personally* (cf. 64 J. P. 159); see s. 17 of Summary Jurisdiction Act, 1848. As to proof of service by "declaration," see s. 41 of the Summary Jurisdiction Act, 1879 (*post*, p. 1048).

Penalty.

PENALTY of 1*l.*, recoverable by distress and, in default, imprisonment, as a *first class misdemeanant*, according to scale (p. 111) (30 & 31 Vict. c. 84, s. 31).

Procedure.

All informations must be laid *within twelve months* (34 & 35 Vict. c. 98, s. 11); *i.e.*, where a *penalty* is sought under s. 29 of the earlier Act, within twelve months of the time within which the child ought to have been vaccinated, and, where an *order* is sought under s. 31, within twelve months of the date on which the notice required the vaccination to be completed. For the provisions against repeated penalties, see ss. 3, 4 of the Vaccination Act, 1898 (*ante*, p. 919).

It seems to afford no defence that the order was made at a time when it was impracticable to act upon it so far as the *public vaccinator* was concerned (*Francis v. Smith*) (*e*); but see now 61 & 62 Vict. c. 49, s. 1 (ii.) (*ante*, p. 915).

The defendant may appear by any member of his family, or, indeed, by any person authorized by him in that behalf (34 & 35 Vict. c. 98, s. 11).

(*b*) (1897) 77 L. T. 338.

(*c*) [1897] 1 Q. B. 347; 66 L. J. Q. B. 293; 76 L. T. 57; 45 W. R. 319; 61 J. P. 218.

(*d*) [1900] 1 Q. B. 803; 69 L. J. Q. B. 272; 48 W. R. 608; 64 J. P. 326.

(*e*) (1894) 58 J. P. 429.

VAGRANTS.

The Vagrancy Act (5 Geo. 4, c. 83) was designed for the discouragement of the class of persons who wander about the country with no fixed place of abode, no desire to enter upon honest labour, and no legitimate means of livelihood. It is a highly penal statute, so that if any doubt arises as to its applicability in a given set of circumstances, justices should be very cautious as to how they exercise their powers under it.

Vagrants are divided into three categories—(a) *Idle and Disorderly Persons*; (b) *Rogues and Vagabonds*; and (c) *Incorrigible Rogues*.

Under the Vagrancy Act any person whatsoever may apprehend without warrant any person “found committing” any of the offences created by the Act, and convey him before a justice or deliver him to a peace officer (5 Geo. 4, c. 83, s. 6). Cf. *ante*, p. 47.

Apprehension
without
warrant.

And, upon information on oath that “a vagrant” is known or suspected to be in any house kept for the lodging of travellers, a justice may, by warrant, authorize any person to enter at any time into such house and apprehend the vagrant (*ib.* s. 13).

Search
warrant.

One justice may convict; but as to the limits of his power of punishment, see *ante*, p. 12.

Conviction by
single justice.

APPEAL lies to the quarter sessions (*ib.* s. 14). On appeal from a conviction in respect of an alleged offence in a non-quarter sessions borough, any order for payment of the prosecutor’s costs must be made on the *county* treasurer (*R. v. Yorks (W. R.) JJ.*) (*f*).

Appeal.

But by s. 9 (iv.) of the “Costs in Criminal Cases Act, 1908,” that Act applies “in the case of any appeal” under the Vagrancy Act, 1824, “as if the hearing of the appeal by the court of quarter sessions were the trial of an *indictable offence*.” Costs of an appeal from a *county* borough would therefore be payable out of the borough funds (8 Edw. 7, c. 15, s. 4 (i)).

P. 1083.

P. 1080.

For the purpose of defraying the cost of apprehension, and of conveyance to and maintenance in gaol, money found on the offender may be made use of; or, if money

Expenses.

sufficient for these purposes be not found, the justice may order a sale of the offender's effects (s. 8).

The following classes of offenders are punishable as—

Idle and Disorderly Persons.

Neglect to
maintain
family (a).
Form of
Information,
post, p. 1228.

(a) *Persons neglecting to maintain themselves or their families, i.e., persons who, though able wholly or in part to maintain themselves or their families, wilfully neglect or refuse to do so, and thus render themselves or those persons whom they are legally bound to maintain, chargeable to the parish or union* (5 Geo. 4, c. 83, s. 3; 12 & 13 Vict. c. 103, s. 3).

PENALTY.—IMPRISONMENT, with or without hard labour, for not more than ONE MONTH; or FINE not exceeding 5*l.* and, in default of distress, imprisonment, without hard labour, according to scale (p. 111).

As to the punishment for *second* offence, see (i.) *post*, p. 926; for *third* offence, see (w) *post*, p. 932.

An unmarried woman, too, is similarly punishable who neglects to maintain her bastard child (7 & 8 Vict. c. 101, s. 6).

But a widow is under no obligation to support the children of her late husband by a former wife.

If a married woman has separate property she is legally liable to support not only her husband, but her children and grandchildren, though this liability on the part of the wife does not free her husband from liability (45 & 46 Vict. c. 75, s. 21); and see *ante*, p. 786.

But if the wife has no separate property and is deserted by her husband, she is not during his lifetime liable for neglect to maintain the children of the marriage (*Peters v. Cowie*) (g).

A man is, moreover, legally liable to maintain the child of any woman he may marry (whether legitimate or bastard) until it is sixteen years of age, or until the death of the mother; and it is presumed that such a child would form part of the "family," so that the husband would be punishable for neglecting to maintain it (4 & 5 Will. 4, c. 76, s. 57; see *ante*, p. 785).

(g) (1877) 2 Q. B. D. 131; 46 L. J. M. C. 177; 36 L. T. 107; 41 J. P. 597.

A husband is not, however, liable under the Vagrancy Act for neglecting to maintain his wife if she refuses to live with him (*Flannagan v. Bishopswearmouth*) (h), or if she is living in adultery (*R. v. Flintan*) (i), notwithstanding that the wife originally left home owing to her husband's cruelty or misconduct, or was deserted by him (*Mitchell v. Torrington*) (k). But the *past* adultery of the wife will not relieve the husband if he has condoned it, or if he has connived at it and then turned her out of doors (*Wilson v. Glossop*) (l). As to the meaning of "condonation" see *ante*, p. 556.

Neglect to maintain family (a)
—*contd.*

A father may, it seems, be convicted of neglecting to maintain his children notwithstanding that he has, at the suggestion of the guardians, entered into a deed of separation from his wife and covenanted to pay her a weekly sum towards the maintenance of the children (*Guardians of Westminster v. Buckle*) (m).

To render a husband liable to punishment for neglecting to maintain his wife, it is not necessary to give strict evidence of the marriage. The court may act on evidence of cohabitation and reputation; but, if the accused deny the fact of the marriage, it is submitted that (despite the decision in *Elliott v. Totnes Union*) (n), as the burden of proof lies on the prosecution, justices should insist upon a strict inquiry before convicting.

Evidence.

It must, too, be noted that the mere *omission* to maintain does not constitute a crime.

The court may and should require some evidence of the defendant's means or ability to provide for, or contribute towards the support of, his family so that it may appear that the neglect or refusal was *wilful*. The mere fact that the man has engaged in some work, without evidence as to the conditions under which he worked or as to the receipt of wages by him, is not conclusive (*Hosegood v. Camps*) (o).

"Wilfully refuse or neglect."

And where justices found that a defendant had refused

(h) (1858) 8 E. & B. 451; 27 L. J. M. C. 46; 22 J. P. 464.

(i) (1830) 1 B. & Ad. 227.

(k) Cited *ante*, p. 561.

(l) (1888) 20 Q. B. D. 354; 57 L. J. Q. B. 161; 58 L. T. 707; 52 J. P. 246.

(m) (1897) 61 J. P. 247.

(n) (1892) 57 J. P. 151.

(o) (1889) 53 J. P. 612.

Evidence—
contd.

to maintain his wife under the *bona fide* belief that she had committed adultery, while it appeared that he had, under certain conditions, offered to support the children, the court held that the justices had properly declined to regard such refusal as “wilful” (*Morris v. Edmonds*) (p).

Moreover, if it is sought to convict a man of a *wilful neglect* to maintain himself or his family by reason of his *refusal to accept work* offered to him, it is necessary to examine the *conditions* on which the work was offered. The regulations or conditions imposed upon him must have some relation to the work offered, or to the wages which he is to receive for it, or to his conduct in its performance. Thus, where the offer was to work on a farm colony with “6d. a week in the nature of pocket money,” requirements to take part in a sort of church parade, attend meetings in “the citadel,” and, while abstaining from drink himself, “to discourage other colonists from entering premises, &c.,” were held not to be such requirements as the pauper was bound to accept (*Poplar Union v. Martin*) (q). In one case, a man became chargeable by reason of an attack of delirium tremens, during which he was removed to a workhouse infirmary. An attempt to secure his conviction under this section, of course, failed (*St. Saviour’s Union v. Burbridge*) (r). As to refusal to work on account of a strike, see *A.-G. v. Merthyr Tydvil* (s).

The fact of *chargeability* may be proved by a certificate of the guardians of the poor for the union (7 & 8 Vict. c. 101, s. 69), or otherwise. As to evidence of *legitimacy*, cf. *ante*, p. 296. As to the liability of *soldiers*, see *ante*, p. 885.

The wife may be called as a witness against her husband when he is charged under this Act with not maintaining her or other members of his family (61 & 62 Vict. c. 36, s. 4; *ante*, p. 173 and Appendix, p. 1074).

(p) (1898) 77 L. T. 56; 18 Cox, 627; 41 Sol. Jo. 698.

(q) [1905] 1 K. B. 728; 74 L. J. K. B. 306; 92 L. T. 197; 3 L. G. R. 340; 69 J. P. 146; 53 W. R. 398.

(r) [1900] 2 Q. B. 695; 69 L. J. Q. B. 886; 83 L. T. 317; 64 J. P. 582, 725.

(s) [1899] 63 J. P. 536; 80 L. T. 618; on appeal [1900] 1 Ch. 516; 64 J. P. 276; 82 L. T. 662; 69 L. J. Ch. 300; 48 W. R. 403.

- (b) Persons returning to and becoming chargeable to any parish, &c., from which they have been legally removed by two justices, unless with a certificate acknowledging settlement in another parish.

Returning after order of removal (b).

Punishment as in (a), *ante*, p. 922 (5 Geo. 4, c. 83, s. 3).

- (c) Paupers removed under orders obtained by guardians of a union returning within twelve months and becoming chargeable to the union: Cf. *ante*, p. 792.

Punishment as in (a) (28 & 29 Vict. c. 79, s. 7).

- (d) Persons applying for workhouse relief falsely denying possession of property (11 & 12 Vict. c. 110, s. 10); or giving false names, or making false statements, in order to obtain relief (45 & 46 Vict. c. 36, s. 5). Cf. *ante*, p. 792.

Fraudulent applications for relief (d).

Punishment as in (a).

- (e) Pedlars, &c., wandering abroad and trading without a licence (5 Geo. 4, c. 83, s. 3).

Pedlars, &c., trading without licence (e).

Punishment as in (a); and cf. 34 & 35 Vict. c. 96, ss. 13, 16, *ante*, p. 525.

- (f) Prostitutes wandering in the streets or in places of public resort and behaving in a *riotous* or *indecent* manner (5 Geo. 4, c. 83, s. 3).

Prostitutes behaving riotously or indecently (f).

Punishment as in (a).

- (g) Persons wandering abroad or placing themselves in any public place, street, highway, court, or passage to beg or gather alms (5 Geo. 4, c. 83, s. 3).

Begging (g).

Collecting alms in an orderly manner and for a lawful object is not an offence under this section unless it be done as a habit or mode of life. Thus, colliers on strike, who had gone round in an orderly manner begging for assistance in money or goods, were held to have been wrongfully convicted (*Pointon v. Hill*) (t).

Punishment as in (a), *ante*, p. 922.

If a *pedlar* is convicted of begging the court must deprive him of his licence (*ante*, p. 525).

It is probable that, in districts to which Part VII. of the *Public Health Act*, 1907, has been APPLIED, a place of public resort or recreation ground belonging to the local authority, and unfenced ground adjoining or abutting

(t) (1884) 12 Q. B. D. 306; 53 L. J. M. C. 62; 50 L. T. 268; 4 J. P. 341.

upon a street in an urban district, should be deemed to be a "public place" within this clause: see a curiously framed section of that Act (7 Edw. 7, c. 53, s. 81, cited *post*, p. 929).

Causing
children to
beg (h).

(h) Persons causing or encouraging children *under sixteen years* of age to beg as in (g) (5 Geo. 4, c. 83, s. 3).

Punishment as in (a).

The child if under fourteen may be sent to an industrial school. See *ante*, p. 181; and cf. title CHILDREN, at p. 375.

The following classes of offenders are punishable as—

Rogues and Vagabonds.

Second
conviction
for offence
rendering
person
punishable as
"idle and
disorderly"
(i).

(i) Persons committing any of the offences rendering them punishable as idle and disorderly persons under 5 Geo. 4, c. 83, s. 3, *after having been* PREVIOUSLY CONVICTED *as idle and disorderly* (5 Geo. 4, c. 83, s. 4).

PENALTY.—IMPRISONMENT, with or without hard labour, for not more than THREE MONTHS; or FINE, not exceeding 25*l.*, and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111).

Desertion of
wife or chil-
dren (j).

(j) Persons *running away* and leaving wife or children chargeable, or whereby she or they shall become chargeable to any parish (5 Geo. 4, c. 83, s. 4), or to any union (12 & 13 Vict. c. 103, s. 3).

Form of
Information,
post, p. 1223.

Punishment as in (i). As to *soldiers*, see *ante*, p. 885.

So, too, an unmarried woman is similarly punishable if she deserts her bastard child, leaving it chargeable; or if she is convicted *for a second time of neglecting to maintain* such child (7 & 8 Vict. c. 101, s. 6).

A married woman, who has no separate property and is deserted by her husband, cannot be convicted of running away and leaving her children chargeable (*Peters v. Cowie*) (u).

"Child" in this section (5 Geo. 4, c. 83, s. 4) means *legitimate* child (*R. v. Maude*) (x), so that although the bastard child of a wife probably forms part of the husband's family within sect. 3 (Offence (a)), it would

(u) (1877) 2 Q. B. D. 131; 46 L. J. M. C. 177; 36 L. T. 107; 41 J. P. 597.

(x) (1842) 2 D. N. S. 58; 11 L. J. M. C. 120.

seem that the husband could not be convicted as a rogue and vagabond for *deserting* such a child.

If, on the expiration of the sentence, the accused fails to remove his children from the workhouse and absconds, he may again be convicted (*Bannister v. Sullivan*) (y).

If, at the time when the husband and the wife parted, the latter had sufficient means of livelihood, the husband cannot be convicted of *desertion* unless it be shown that he *knew* that his wife had since become chargeable (*Sweeney v. Spooner*) (z). Evidence.

As in (a), the wife may be called as a witness *against* her husband on the charge of desertion (*ante*, p. 173).

Proceedings may be commenced by any relieving officer of the guardians; but, where the proceedings are instituted in respect of an alleged "desertion" (as distinguished from "neglect to maintain"), they must now be so commenced within two years from the date of the offence, *i.e.*, from the desertion in case actual chargeability had then already commenced (*Reeve v. Yates*) (a); *Ashley v. Blaker* (aa). Cf. *ante*, p. 36.

Poor law guardians may by resolution assume control of a *child* maintained by them, until *eighteen* years of age, if it has been *deserted* by its parent, or if both the *parents* are *dead*, or, in case of an illegitimate child, if the mother is *dead*. There is a like power where a parent (a) by reason of mental deficiency or vicious habits or mode of life is *unfit to control* the child; or (β) is in *penal servitude* or *detained* under the Inebriates Act, 1898; or (γ) has been sentenced to *imprisonment* for an offence against any of his or her *children*; or (δ) is a permanently bedridden or disabled inmate of a workhouse and *consents* to the resolution. Such a resolution does not deprive the guardians of the right to obtain an order for the removal of the child to its place of settlement (*Wantage Union v. Bristol Union*) (b). A *court of summary jurisdiction*, on complaint by a parent (or, if there be none, the guardian) of a child, may by Poor law guardians may, by resolution, assume control of child.

Justices may determine such resolution.

(y) (1904) 91 L. T. 380; 2 L. G. R. 874; 68 J. P. 390.

(z) (1863) 2 B. & S. 329; 32 L. J. M. C. 82; 7 L. T. N. S. 623; 27 J. P. 53.

(a) (1862) 1 H. & C. 435; 31 L. J. M. C. 241; 10 W. R. 779.

(aa) (1909) 73 J. P. 495.

(b) [1907] 1 K. B. 68; 76 L. J. K. B. 25; 96 L. T. 118; 71 J. P. 54; 5 L. G. R. 33; 23 T. L. R. 54.

ORDER determine such resolution, or direct that the child be permanently or temporarily under the control of its parent or guardian (62 & 63 Vict. c. 37, s. 1). There is a penalty of 20*l.*, recoverable on summary conviction by distress and imprisonment, in case any one knowingly assists, or induces to escape, *or* harbours, a child which is the subject of such a resolution (*ib.* s. 2).

Telling
fortunes,
&c. (k).

- (k) Persons pretending or professing to *tell fortunes*, or using any subtle craft, means, or device, by palmistry or otherwise, to deceive and impose (5 Geo. 4, c. 83, s. 4).

Punishment as in (i) (p. 926).

A person, who issued advertisements offering to cast nativities or tell fortunes by means of astrology, was held to be rightly convicted under this section without proof that he had actually professed to tell the fortune of any particular individual (*Penny v. Hanson*) (c). Pretending or professing to tell fortunes is not within the statute unless it be done with *intent to deceive*; but the word “pretend” or “profess” imports such intent, so that an intention to deceive need not be expressly averred in the conviction (*R. v. Entwistle*) (d).

It may be noted that spiritualists professing to commune with the dead by knocks, writing, &c., have been held to use “craft, means, or device, by way of palmistry *or otherwise*” (*Monck v. Hilton* (e); *Re Slade*) (f).

Lodging in
outhouses, &c.,
and failing to
give good
account (l).

- (l) Persons wandering abroad and lodging in any barn or outhouse, *or* in any deserted or unoccupied building, *or* in the open air, *or* under a tent, *or* in any cart or waggon, *not having any visible means of subsistence and not giving a good account of themselves* (5 Geo. 4, c. 83, s. 4).

Punishment as in (i) (p. 926).

Exposing to
view obscene
prints (m).

- (m) Persons wilfully exposing to view in any street or public place, or in the window or other part of any shop, &c., therein situate, any obscene print, picture, or other indecent exhibition (5 Geo. 4, c. 83, s. 4; 1 & 2 Vict. c. 38, s. 2).

(c) (1887) 18 Q. B. D. 478; 56 L. J. M. C. 41; 56 L. T. 235.

(d) [1899] 1 Q. B. 846; 68 L. J. Q. B. 580; 80 L. T. 657; 63 J. P. 423.

(e) (1877) 2 Ex. D. 268; 46 L. J. M. C. 163; 41 J. P. 214.

(f) (1877) 36 L. T. 402; 41 J. P. 118.

Punishment as in (i) (p. 926).

See also the Indecent Advertisements Act, 1889 (*ante*, p. 568).

- (n) Persons "wilfully, openly, lewdly, and obscenely exposing the person in any street, road, or public highway, or in view thereof, or in any place of public resort, WITH INTENT TO INSULT ANY FEMALE" (5 Geo. 4, c. 83, s. 4). Exposing person with intent to insult a female (n).

Punishment as in (i) (p. 926).

The offence of exposing the person in a *street* under the Town Police Clauses Act (10 & 11 Vict. c. 89, s. 28), which is in force in urban districts and in many rural districts, may be complete, although there be no such intent as mentioned in the Vagrant Act; see INDECENCY (*ante*, p. 567).

- (o) Persons wandering abroad and *exposing wounds or deformities* to obtain alms, or, under a false pretence, going about to collect alms or endeavouring to procure charitable contributions. Collecting alms, &c., by exposing wounds, or by fraud (o).

Punishment as in (i) (p. 926).

- (p) Persons playing, or betting *by way of wagering or gaming, in any street, road, highway, or other open and public place, or in any open place* to which the public have or are permitted to have access, *at or with any table or instrument of gaming, or any coin, card, token, or other article used as an instrument or means of such wagering or gaming, at any game or pretended game of chance* (36 & 37 Vict. c. 38, s. 3). Gaming in in public places (p).
Form of Information, post, p. 1224.

Punishment.—IMPRISONMENT, as in (i) (*ante*, p. 926); or, in lieu thereof, a PENALTY, for *first offence*, of 2*l.*, and, in default of distress, imprisonment, *without* hard labour, according to scale (p. 111); and for a *second offence* a PENALTY not exceeding 5*l.*

In districts to which Part VII. of the *Public Health Act*, 1907, has been APPLIED, places of public resort or recreation grounds belonging to the local authority, and unfenced ground adjoining or abutting upon any street in an urban district, are to be deemed "open and public places" within the meaning of the Vagrancy Act, 1824, and any Acts amending the same (7 Edw. 7, c. 53, s. 81). Public Health Act, 1907.

It has been held that a railway carriage *in transit* is an

open place to which the public have access (*Langrish v. Archer*) (g).

So, also, a field occupied by a colliery company and used as a recreation ground to which the colliers and others were permitted to have access (*Turnbull v. Appleton*) (h).

It is an essential ingredient of the offence (p) that there should be played a *game or pretended game of chance*, so that, *e.g.*, mere betting is not "betting by way of wagering with tokens" within the Act (*Ridgeway v. Farndale* (i); *Lester v. Qvested*) (k).

Having pick-locks, &c., with felonious intent (q).

(q) Persons having in their possession any pick-lock, key, crow, jack, bit, or other implement, with intent feloniously to break into any dwelling-house, warehouse, coach-house, stable, or outbuilding (5 Geo. 4, 83, s. 4).

Punishment as in (i) (p. 926).

As to a similar offence *in the night-time*, see the Larceny Act (24 & 25 Vict. c. 96, s. 58) (*ante*, p. 544).

A stone and linen with treacle on it, if used by house-breakers for the purpose of preventing noise from broken glass, may be implements of housebreaking within the meaning of s. 58 of the Larceny Act, 1861 (*R. v. Percival and others*) (l). As to the possession of an implement by one of two persons being sufficient to support the conviction of both, see *R. v. Thompson*, cited *ante*, p. 544.

(r) Persons armed with any gun, cutlass, bludgeon, &c., or having upon them any instrument, with intent to commit any *felonious* act (5 Geo. 4, c. 83, s. 4).

Punishment as in (i) (p. 926).

As to a similar offence *in the night-time*, see the Larceny Act (24 & 25 Vict. c. 96, s. 58) (*ante*, p. 544).

Being found upon premises for unlawful purpose (s).

(s) Persons "found in or upon any dwelling-house, warehouse, coach-house, stable, or outhouse, or in any *enclosed* yard, garden, or area, *for any unlawful purpose*" (5 Geo. 4, c. 83, s. 4).

Punishment as in (i) (p. 926).

(g) (1883) 10 Q. B. D. 44; 52 L. J. M. C. 47; 47 L. T. 548; 47 J. P. 295.

(h) (1881) 45 J. P. 469.

(i) [1892] 2 Q. B. 309; 61 L. J. M. C. 199; 67 L. T. 318; 41 W. R. 128; 56 J. P. 697.

(k) (1901) 85 L. T. 487; 66 J. P. 54.

(l) (1905) 69 J. P. 320.

The purpose must be not only unlawful but *criminal*. For example, fornication is not an unlawful purpose within the section (*Hayes v. Stephenson*) (m).

It is, however, submitted that it is not necessary that there should exist an intention to commit a *felony*.

- (t) Suspected persons, or reputed thieves, *frequenting or loitering about or in* "any river, canal or navigable stream, dock, or basin, or any quay, wharf, or warehouse near or adjoining thereto, or any street, highway, or avenue leading thereto, or *any place of public resort, or any avenue leading thereto, or any street or any highway, or any place adjacent to a street or highway, WITH INTENT TO COMMIT A FELONY*" (5 Geo. 4, c. 83, s. 4 ; 54 & 55 Vict. c. 69, s. 7).

Reputed thieves, &c., frequenting or loitering in public place with felonious intent (t).

Punishment as in (i) (p. 926).

It is not necessary to prove any particular act evidencing the intent to commit a felony, if, from the circumstances of the case and the person's known character, the court be satisfied that such an intent existed (34 & 35 Vict. c. 112, s. 15 ; 54 & 55 Vict. c. 69, s. 7).

A railway platform seems to have been assumed to be a place of public resort (*Ex parte Davis*) (n) ; so, too, is a private house in which an auction is being held (*Sewell v. Taylor*) (o). But a steamboat lying at a quay is not such a place (*R. v. Taylor*) (p).

- (u) Persons who, when apprehended as *idle and disorderly persons*, violently *resist the constable* who apprehends them (in the event of there being a conviction for the offence for which the apprehension took place) (5 Geo. 4, c. 83, s. 4).

Resisting apprehension (u).

Punishment as in (i) (p. 926).

- (v) *Male persons* who (a) knowingly live wholly or in part on the *earnings of prostitution*, or (β) in any public place persistently *solicit* or importune for immoral purposes (61 & 62 Vict. c. 39, s. 1 (i.)).

Male persons trading in prostitution, or soliciting. (v).

Where a man is shown to live with, or to be habitually in the company of, a prostitute, and has no visible means of subsistence, he is *to be deemed* to be knowingly living

(m) (1861) 3 L. T. 396 ; 25 J. P. 329

(n) (1857) 26 L. J. M. C. 178.

(o) (1860) 29 L. J. M. C. 50.

(p) (1857) 21 J. P. 488.

on the earnings of prostitution, unless he can satisfy the court to the contrary (*ib.* s. 1 (iii.)).

Punishment as in (i) (p. 926).

A court of summary jurisdiction may, upon information on oath, issue a *warrant* authorizing any constable to *enter and search* the house used by the prostitute and arrest the male person (*ib.* s. 1 (ii.)).

Incorrigible
rogues.

The following classes of offenders are punishable as—

Incorrigible Rogues.

(w) Persons committing any offence which subjects them to punishment as rogues and vagabonds after having been previously convicted as such (5 Geo. 4, c. 83, s. 5). As to proof of the previous conviction, see *ante*, pp. 29, 106, 136.

A man found guilty of an offence in such circumstances as to subject him to punishment as a “rogue and vagabond,” cannot be convicted as an “incorrigible rogue” merely because he has, on two or more previous occasions, been convicted of being an “idle and disorderly person.” In such case, it must appear further that, on the second or some subsequent occasion, he had been *adjudged* to be a “rogue and vagabond” and “duly convicted thereof” (*R. v. Johnson*) (*pp.*).

Punishment.—The offender may be committed to prison with hard labour until the *quarter sessions*; and he may then be sentenced at quarter sessions to further imprisonment, with hard labour, for a term not exceeding *one year*, and the court may also order whipping if the offender be a male (5 Geo. 4, c. 83, s. 10). The “Costs in Criminal Cases Act, 1908” (APPENDIX, p. 1083), applies in case of a person committed as an incorrigible rogue as if he were committed for an *indictable* offence (8 Edw. 7, c. 15, s. 9 (iv.)). It seems that the accused can appeal *from* the quarter sessions to the Court of Criminal Appeal against the *sentence* or on any question appearing *on the face of the record*, but not against the fact of *conviction* (*R. v. Johnson, supra*). He could, however, presumably appeal to quarter sessions against his conviction and commitment to prison by the petty sessions (5 Geo. 4, c. 83, s. 14).

(*pp.*) [1909] 1 K. B. 439; 78 L. J. K. B. 290; 100 L. T. 464; 53 S. J. 288; 25 T. L. R. 229; 73 J. P. 135.

(x) Persons committed under the Vagrant Act and escaping out of confinement (5 Geo. 4, c. 83, s. 5).

Punishment as in (w).

(y) Persons apprehended as *rogues and vagabonds* and violently *resisting the constable*, if afterwards convicted of the offence for which they were apprehended (5 Geo. 4, c. 83, s. 5).

Punishment as in (w).

There are also two additional offences created by the Vagrant Act, viz. :—

(i.) Constable or other peace officer neglecting duty in anything required of him by the Act.

(ii.) Any person hindering constable, &c., in execution of the Act (5 Geo. 4, c. 83, s. 11).

The PENALTY in either case is a FINE not exceeding 5*l*.

Children Act, 1908, s. 118.

Under the CHILDREN ACT, 1908, a PENALTY not exceeding (with costs) 20*s*. may be imposed on a person who “habitually wanders from place to place and takes with him any child *above the age of five*,” unless he proves that such child is totally exempted from school attendance or is not, by being so taken with him, prevented from receiving efficient elementary education. But this does not apply to a child provided for by the Canal Boats Acts (*ante*, p. 358). A constable may apprehend the person found “taking a child with him” and remove the child to a place of safety, when the provisions of Part II. of the Act (*ante*, p. 381) will apply (8 Edw. 7, c. 67, s. 118).

See, too, *ante*, p. 168; and a proviso exempting, “during the months of April to September,” a person whose trade requires him to travel if he has obtained a certificate for not less than 200 attendances of the child “during the months of October to March immediately preceding” (s. 118 (iii.)). As to the procurement and forms of such certificates, see the regulations of the Board of Education of April 20th, 1909 (S. R. & O. 1909, No. 534); and as to presumption of *age*, see s. 123 (i.), (ii.), *ante*, pp. 184, 379.

VERMINOUS CHILDREN.

Under the CHILDREN ACT, 1908, an “education authority” may direct their “medical officer” to examine

Vagrants breaking out of confinement (x).

Rogues and vagabonds resisting apprehension (y).

CHILDREN ACT, 1908, s. 118.

Vagrants preventing children receiving education.

Cleansing of verminous children.

Verminous
children—
contd.

any public elementary school provided or maintained by them, and the person and clothing of any child attending the school. If the medical officer is of opinion that the person or clothing of a child is "infected with vermin or is in a foul or filthy condition," the authority may give notice to the "parent or guardian of, or other person liable to maintain," the child requiring him to "cleanse properly" *within twenty-four hours after the receipt of the notice* (8 *Edw. 7, c. 67, s. 122 (i.)*). The authority must, however, furnish "written instructions describing the manner in which the cleansing may best be effected" (*ib. s. 122 (v.)*). In this section "medical officer" means an officer appointed for the purpose of s. 13 of the Education (Administrative Provisions) Act, 1907; but the authority may direct *any person* "provided with and, if required, exhibiting the authority in writing of their medical officer" to make the examination. The examination and cleansing of girls must not be undertaken except by a duly qualified medical practitioner or by a "woman" duly authorized (*ib. s. 122 (vi.), (vii.)*).

Disregard of
notice to
cleanse.

If the person to whom the notice is given fails to comply therewith during the twenty-four hours, the medical officer or authorized person may remove the child from the school to suitable premises and there detain the child until he has caused the person and clothing of the child to be properly cleansed with suitable appliances (*ib. s. 122 (ii.)*).

Penalty in
case of
further
default.

If the person or clothing of a child has been cleansed under this section, and the *parent or guardian* of, or other person liable to maintain, the child *allows* him "to get into such a condition that it is again necessary to proceed under this section," such parent, guardian, or other person becomes liable to a PENALTY not exceeding TEN SHILLINGS, recoverable by *distress* and, in default, imprisonment *without* hard labour according to scale (p. 111) (*ib. s. 122 (iv.)*).

WEIGHTS AND MEASURES.

Weights and
Measures
Acts.

The statutes regulating weights and measures are consolidated by the Weights and Measures Acts, 1878, 1889, and 1904. The principal Act of 1878 establishes *uniformity* of all measures of weight, capacity, and length

in Great Britain, and abolishes local and customary measures, as well as the old system of selling by heaped measure (41 & 42 Vict. c. 49, ss. 3, 19). The Acts of 1889 and 1904 are amending Acts increasing the penalties for certain offences, extending the powers of the Board of Trade, providing for the more efficient inspection and verification of weights and measures, and particularly for preventing fraud in connection with the sale of *coal* (52 & 53 Vict. c. 21; 4 Edw. 7, c. 28).

It is not thought necessary here to particularise the various standards of weights and measures, which are prescribed at length in the Act of 1878, ss. 1—14, and in the schedules thereto: these are fixed in manner therein set forth, are deposited in the standards department of the Board of Trade, and are known as the “imperial standards.”

By an Order in Council (February 4th, 1879) a new denomination of weight of 100 lb., called the “cental” or “new hundredweight,” was ordered to be a Board of Trade standard. By the “Cran Measures Act, 1908,” the use of cran measures in connection with the fresh herring trade is legalised in districts to which the Act has been applied by the Board of Agriculture and Fisheries. The statute confers powers of entry and inspection, and deals with the obstruction of officers and the forging of brands and marks (8 Edw. 7, c. 17, ss. 3, 5, 9).

Every contract or dealing made or had in the United Kingdom for any work, wares, or merchandise, or other thing to be done, sold, or delivered *by weight or measure*, must be made according to the imperial standard, or some multiple or part thereof, and, if not so made, is void (41 & 42 Vict. c. 49, ss. 19, 21); while every person who *sells* in contravention of these sections commits an offence (see Offence No. 1, *post*, p. 938). It is, however, specially enacted that the use in trade of a weight or measure of the *metric system* shall be lawful, and a dealing is not void by reason only of the use of such weight or measure (60 & 61 Vict. c. 46, s. 1): and see Order in Council, May 19th, 1898. Moreover, a sale by local measure of weight or capacity would not be illegal if the local measure consists of a given multiple or

Imperial standards.

The “cental” weight.

“Cran” measures.

Contracts for sale of article sold by weight or measure void if imperial standard not observed.

aliquot part of some fixed imperial standard; as, *e.g.*, where a local measure consists of a certain number of imperial pounds. For, in that case, the sale, though nominally by the local measure, would really be by weight of the imperial standard (*cf. Hughes v. Humphreys*) (*t*).

Local standards to be provided and reasonable means of verification afforded.

The local authority (*i.e.*, the county council or the town council, as the case may be) must provide, for the purpose of comparison by way of verification or inspection, local standards of weights and measures, which must be verified by the Board of Trade—the standards of weight within five years and the standards of measure within ten years of the time of being used. The authorities are also bound to afford reasonable means of access and means for verification within their districts (41 & 42 Vict. c. 49, ss. 40—42); and, as to the amount of error to be tolerated in local standards and the fees to be taken on verification, see Order in Council, December 21st, 1907.

Appointment of inspectors of weights and measures.

They must also appoint a sufficient number of qualified inspectors; and it becomes the duty of an inspector to attend at the times and places appointed by the local authority to verify and mark with the stamp of verification such measures, weights, and weighing instruments used for trade as are brought to him; while, in case of a measure or of a weight of a quarter of a pound or upwards, he must further stamp thereon a mark, distinguishing the district for which he acts. The weight, measure, or weighing instrument is thenceforward a legal weight, measure, &c., throughout the kingdom, unless found to be false or unjust (*ib.* ss. 43—45; 4 Edw. 7, c. 28, ss. 12, 15).

“Weighing instrument,”

The expression “weighing instrument” includes one “constructed to also (*sic*) calculate and indicate the price in money” (4 Edw. 7, c. 28, s. 16). With the *consent* of the local authority, an inspector may prosecute any information or other proceeding arising under the Acts or “in the discharge of his duties as such inspector” (*ib.* s. 14). A *particular* consent for *each* proceeding is not necessary (*Tyler v. Ferris*) (*u*).

Power of inspector to prosecute.

(*t*) (1854) 3 E. & B. 954; 23 L. J. Q. B. 356; 2 W. R. 526; 18 J. P. 649.

(*u*) *Ante* p. 38.

Every weight (unless too small) must have its denomination legally stamped on the top or side, and every measure of length or capacity must have its denomination stamped outside, in default of which the stamp of verification must not be affixed (41 & 42 Vict. c. 49, s. 28; 4 Edw. 7, c. 28, s. 13 (i.)).

Under s. 5 of the Act of 1904 the Board of Trade has made *general regulations* as to the verification and stamping of weights, measures, and weighing instruments, as to the obliteration and defacing of stamps, the tests to be applied, the limits of error to be allowed, and other matters. These regulations came into force on October 1st, 1907, and from that date earlier regulations and bye-laws ceased to have effect. Any *inspector* who *refuses or wilfully neglects* to act in compliance with such regulations becomes liable to a PENALTY of 5*l.* recoverable summarily (4 Edw. 7, c. 28, s. 5).

General
regulations
of Board of
Trade.

A part (not exceeding half) of the fine may be ordered to be paid to the informer, unless the informer be an inspector (41 & 42 Vict. c. 49, s. 57; 4 Edw. 7, c. 28, s. 13 (ii.)).

Penalties.

No person is liable to an increased fine for a *second offence* unless the first conviction was an offence *under the same section* and took place *within five years* (41 & 42 Vict. c. 49, s. 58); but, if the court is of opinion that any offence under any section was committed WITH INTENT TO DEFRAUD, it may sentence the offender (in addition to or in lieu of any fine) to IMPRISONMENT, with or without hard labour, for a term not exceeding *two months* (52 & 53 Vict. c. 21, s. 4; 4 Edw. 7, c. 28, s. 13 (iii.)).

Penalty on
second
conviction.

Imprison-
ment for
FRAUD.

The court may, if it think fit, cause the conviction to be published in such manner as may be desirable (52 & 53 Vict. c. 21, s. 14).

Conviction
may be
published.

Where any weights, measures, scales, balances, steel-yards, or weighing machines are found in the possession of any person carrying on a trade, or on the premises of any person which are used for trade (whether such premises be open or enclosed), it lies on such person to prove that they were not in his possession for *use for trade* (41 & 42 Vict. c. 49, s. 59).

Possession of
weight, &c.,
by trader
primâ facie
evidence of
use for trade.

APPEAL lies from any conviction or order to the next practicable court of quarter sessions (*ib.* s. 60).

Appeal.

An inspector appointed by a county may enter a place

OFFENCES
BY INSPEC-
TORS.

OFFENCES
BY INSPEC-
TORS —*contd.*

within the district of an inspector appointed by any other local authority and there verify and stamp the weights, measures, and weighing instruments of any person *residing within his own district*; but he commits an offence if—

- (a) He knowingly stamps a weight, measure, or weighing instrument of any person *residing in the district of an inspector appointed by another authority* (41 & 42 Vict. c. 49, s. 44). Any person having his *principal place of business* within a district is to be deemed to reside in that district, although he, in fact, is not resident there (4 Edw. 7, c. 28, s. 12).

PENALTY.—FINE not exceeding 1*l.* for each weight, measure, or weighing instrument; and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111).

- (b) An inspector commits an offence if he stamps a weight, measure, or weighing instrument without duly verifying the same, or if he is guilty of a breach of the general regulations, or of any duty imposed on him by the Act, or otherwise misconducts himself in the execution of his office (41 & 42 Vict. c. 49, s. 49; 4 Edw. 7, c. 28, s. 5 (iv.)).

PENALTY.—FINE not exceeding 5*l.*, recoverable as above.

- (c) If an inspector, appointed after the Act of 1889, acts as such without the necessary certificate, or if any person not duly appointed acts as an inspector, he becomes liable to a

PENALTY of 10*l.*, or, in case of a second offence, 20*l.*, recoverable as above (4 Edw. 7, c. 28, s. 8 (iii.)).

The following are the principal offences relating to *the use of weights and measures*:—

- (1) To sell by any denomination of weight or measure *other than the imperial standard* (41 & 42 Vict. c. 49, s. 19). But a sale may be in *metric weights, &c.* (s. 21).

PENALTY.—FINE not exceeding 2*l.* for each sale, and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111).

See *ante*, p. 935; and as to the sale of *intoxicants* otherwise than by standard measure, see *ante*, p. 639.

- (2) To sell *otherwise than by avoirdupois weight* any article sold by weight except gold and silver and articles made therefrom, platinum and precious

OFFENCES
RELATING TO
THE USE OF
WEIGHTS
AND
MEASURES.

Selling other-
wise than by
imperial
standard.

Avoirdupois
weight only
to be used

metals or stones, which may be sold by troy weight, or drugs, which may be sold retail by apothecaries' weight (*ib.* s. 20).

except for gold, &c., and drugs.

PENALTY.—FINE not exceeding 5*l.*, recoverable as above.

(3) To print (or for any clerk of a market or other person to make) any return, price list, &c., in which any denomination of weights or measures quoted or referred to is greater or less than the same denomination of the imperial standard (*ib.* s. 23).

Printing or publishing market returns in other than imperial denominations.

PENALTY.—FINE not exceeding 10*s.* for every copy of such return, price list, &c., recoverable as in (1).

(4) To use or possess for use *for trade* a weight or measure not of the denomination of some Board of Trade standard (*ib.* s. 24). See *Bellamy v. Pow* (*x*), in which an information for having in possession a vessel marked " $\frac{1}{3}$ gill," used for supplying "threes" of whiskey, was dismissed, $\frac{1}{3}$ of a gill being a measure or aliquot part of a standard denomination.

Using other weights and measures.

PENALTY.—FINE not exceeding 5*l.*, recoverable as in (1), and, for a second offence within five years, 10*l.*; also *forfeiture* of the weight or measure.

(5) To use or possess for use *for trade*, any weight, measure, scale, balance, steelyard or weighing machine which is *false* or *unjust* (41 & 42 Vict. c. 49, s. 25).

Using unjust weight, &c.

Form of Information, post, p. 1229.

PENALTY.—FINE not exceeding 5*l.*, recoverable as in (1), and, for second offence within five years, 20*l.*; also *forfeiture* of any weight, measure, scale, balance, or steelyard.

Under s. 25 it is not necessary to prove *malajides*. As to the meaning of "use for trade," cf. *Crick v. Theobald* (*y*), in which scales, employed at a factory to weigh lead before it was sent out to customers (*who received invoices specifying the weights*), were held to be so used, although the customers might themselves make returns of the weights which were usually accepted by the vendors as correct. Section 19 imports that everything is *trade* which concerns a contract for the sale of goods by weight or measure.

Use for trade.

The court may (and, if requested, *must*) refer to the

Reference to Board of Trade.

(*x*) (1896) 60 J. P. 712.

(*y*) (1895) 64 L. J. M. C. 216; 72 L. T. 807; 59 J. P. 340.

Board of Trade any question as to the accuracy or efficiency of any weight, measure, or weighing or measuring instrument, and the decision of the Board of Trade will be final. The expenses of the Board of Trade will be paid by the complainant or defendant as the court may direct (4 Edw. 7, c. 28, s. 7 (ii.)).

Illustrations.

Where a *postmaster* also carried on trade as a baker, it was held that he could not (apart from any suggestion of *fraudulent* user) be convicted under 41 & 42 Vict. c. 49, s. 25, as the Act was not, in terms, applied to scales which were the *property of the Crown* (*R. v. Kent*) (z).

If a shopman for his own purposes were to turn a just measure into an unjust one, yet the unjust measure might still be in "the possession" of his employer. But an employer is not civilly liable for fraudulent acts of his servant when committed, not in the interests of such employer, but for the individual purposes of profit of the fraudulent servant; and this principle was applied where the driver of a tank waggon, in the employ of an oil company, had, for his own purposes, manipulated a measure belonging to the company, but not one of those given to him to be used whilst hawking oil from the waggon. It was held that his "possession" must be deemed to be his own "possession" and not that of the company (*Anglo-American Oil Co., Ltd. v. Manning*) (a).

If a machine is perfect in itself, but, owing to atmospheric pressure or other causes, requires *adjustment* before use, it is not necessarily "unjust," because an appliance forming an *integral part* of the machine must be used to correct the inaccuracy. But weights and measures must be kept in *proper order*, and it is not a sufficient answer to a charge under s. 25 to say that any error could be and was allowed for by some extraneous mode of adjustment, (*Great Western Ry. v. Baillie*) (b); as, *e.g.*, by hanging upon the weight-end of the beam a hollow ball which contained shot and was easily removable by being unscrewed at the neck (*Carr v. Stringer*) (c). If

(z) (1889) 54 J. P. 453; 24 Q. B. D. 180; 59 L. J. M. C. 51.

(a) [1908] 1 K. B. 536; 77 L. J. K. B. 205; 98 L. T. 570; 72 J. P. 35; 6 L. G. R. 299; 24 T. L. R. 215.

(b) (1865) 34 L. J. M. C. 31; 11 L. T. 418; 29 J. P. 229; 5 B. & S. 928; 11 Jur. N. S. 264.

(c) (1868) L. R. 3 Q. B. 433; 37 L. J. Q. B. 168; 18 L. T. 399; 16 W. R. 859; 9 B. & S. 238; 32 J. P. 517.

it is necessary to employ removable means of adjustment, the person using such means should take care that, when the adjustment is removed, the scale should turn *against* the vendor (*ib. per Blackburn, J.*). Illustrations
—*contd.*

It is for the justices to determine *what are measures* within the meaning of the Act. Thus, where the magistrate decided that certain unstamped churns filled with gauges were "measures," and the churns, in fact, contained less by two pints than the quantity which the gauges represented, the owner was held rightly convicted of having unjust measures in his possession for use for trade (*Harris v. London C. C.*) (*d*). Again, where justices found as a fact that a churn (marked with numbered discs apparently intended to measure barn gallons) was in the possession of the defendants for use for trade, but as a vessel for the conveyance of milk only, *and not as a measure*, the court refused to disturb the finding; although the farmer, to whom the defendants sent the churn for supplies of milk, had treated the marks as the foundation of his bills, and the railway company accepted the number of gallons as stated by the farmer (*Bellamy v. Great Western Dairies, Ltd.*) (*e*). So it is generally for the justices to say whether a machine is *just* or not (*R. v. Baxendale*) (*f*); but, when (in order to facilitate the weighing of large quantities of tea into small packets) a piece of paper, not heavier than the small paper wrapper to be used, was fixed under the scoop, justices were *directed* to hold the machine to be unjust (*Lane v. Rendall*) (*g*). And a similar direction was given where a small disc (as nearly as possible equal in weight to the paper bag in which tea was to be placed) was affixed by wire to the arm of the scale, which supported the scoop for receiving the tea. The tea was so weighed *at the request of the retail dealers who bought it*, and it was supplied in bags on which was printed an intimation that the weight of the paper was included

(*d*) [1895] 1 Q. B. 244; 64 L. J. M. C. 81; 71 L. T. 844; 18 Cox, 65.

(*e*) (1908) 98 L. T. 757; 6 L. G. R. 772; 72 J. P. 284; 21 Cox, 598.

(*f*) (1880) 44 J. P. 763.

(*g*) [1899] 2 Q. B. 673; 69 L. J. Q. B. 8; 48 W. R. 153; 63 J. P. 757.

Illustrations
—*contd.*

(*London C. C. v. Payne*) (*h*). So again, where a paper bag, *supplied by the customer*, was placed under the scoop, although it was so placed *temporarily*, and pains were taken to prevent the scale in that condition from being used for any other customer (*London C. C. v. Payne* (No. 2)) (*i*). “The statute,” said *Alverstone*, C.J., “intends to prevent the using, in weighing, of a balance which is *at the time*, as a balance, unjust—that is to say, which will not hang true when there is nothing in either dish, and which will not hang true, at the time of weighing, when an equal weight is put into the goods scoop and into the weight dish on the other side.”

FRAUD in
the using of
weights, &c.

Form of In-
formation,
post, p. 1229.

(6) Wilfully to commit, or be a party to committing, any
FRAUD in the *using* of any weight, measure, scale,
balance, steelyard, or weighing machine (41 & 42
Vict. c. 49, s. 26).

PENALTY.—FINE not exceeding 5*l.*, recoverable as in
(1), and for *second* offence within five years 20*l.*; or
IMPRISONMENT, in addition to, or in lieu of, fine, with or
without hard labour, for two MONTHS (4 Edw. 7, c. 28,
s. 13 (iii.)). The weights, measures, scales, balances,
steelyards, or weighing-machines may be forfeited
(52 & 53 Vict. c. 21, s. 3). ~

In a recent case it appeared that a grocer, using a just and accurate weighing-machine, weighed a number of packages of sugar, so that the weight of the sugar, together with the paper in which it was wrapped, was exactly one pound. One of these packages was afterwards sold to a purchaser who asked for, and expected to receive, a pound of sugar. It was held that this did not amount to fraud *in the using of* a weighing-machine within s. 26. “No fraud,” said *Kennedy*, J., “was committed by the defendant *in the using of the machine*, and he has not *with the machine* committed any fraud upon anybody. What he has done is to represent to a buyer in his shop that to be a pound of sugar and nothing else which is, in fact, less than a pound of sugar.” “I come to the conclusion,” said *Alverstone*, C.J., “that to constitute an offence under s. 26 there must be some

(*h*) [1904] 1 K. B. 194; 73 L. J. K. B. 192; 68 J. P. 21.

(*i*) [1905] 1 K. B. 410; 74 L. J. K. B. 108; 92 L. T. 120; 53 W. R. 319; 69 J. P. 80; 3 L. G. R. 118; 21 T. L. R. 162.

fraud *in connection with the using of the scale*" (*Stone v. Tyler*) (*k*). An offence may be committed under this section, where tea is weighed with paper, though the weighing be done before the customer's eyes, if it be so done as to suggest to the customer that the net weight of the tea alone is being ascertained; but evidence of a custom or trade usage to weigh tea with paper would be admissible as bearing on the question whether there was any deliberate fraud (*King v. Spencer*) (*l*). Cf. cases under the Merchandise Marks Act where the weight included the wrapper, *ante*, p. 716.

- (7) Wilfully to make or sell, or cause to be made or sold, any false or unjust weight, measure, scale, &c. (41 & 42 Vict. c. 49, s. 27). Making or selling unjust weights, &c.

PENALTY.—FINE not exceeding 10*l.*, recoverable as in (1); or, for a *second* offence within five years; not exceeding 50*l.*

- (8) To use or possess for use for trade any *weight* or *measure* which has not been duly stamped with a stamp or verification as prescribed by the Act (41 & 42 Vict. c. 49, s. 29). The local authority are not precluded from prosecuting because of a failure, on their part, to fix times, places, &c., for stamping a measure, such as a beer barrel (*Hayley v. Taylor*) (*m*). Using un-stamped weight, &c.
Cf. *ante*, p. 936.

PENALTY.—FINE not exceeding 5*l.*, recoverable as in (1), and for a *second* offence within five years 10*l.*; also *forfeiture* of the weight or measure. In respect of a similar offence in relation to a *weighing instrument*, the PENALTIES are 2*l.* and 5*l.* respectively (52 & 53 Vict. c. 21, s. 1 (ii.)).

- (9) To use any weight for determining the weight of gold and silver coin which has not been verified and stamped by the Board of Trade (41 & 42 Vict. c. 49, s. 31). Using un-stamped weight for weighing coin.

PENALTY.—FINE not exceeding 50*l.*, recoverable as in (1).

- (10) To forge or counterfeit any stamp used for stamping any measure, weight, or weighing instrument, or wilfully to increase or diminish a weight or Forging stamp on measure, weight, &c.

(*k*) [1905] 1 K. B. 290; 74 L. J. K. B. 18; 92 L. T. 83; 69 J. P. 4; 21 T. L. R. 33; 2 L. G. R. 1363.

(*l*) (1904) 91 L. T. 470; 20 Cox, C. C. 692; 2 L. G. R. 979; 68 J. P. 530.

(*m*) (1900) 82 L. T. 803; 19 Cox, 538.

measure so stamped. *Removing* a stamp, and *inserting it into another weight*, measure, or weighing or measuring instrument, is to be deemed a forging or counterfeiting of the stamp (*ib.* s. 32; 52 & 53 Vict. c. 21, s. 1 (iv.); 4 Edw. 7, c. 28, s. 10).

PENALTY.—FINE not exceeding 50*l.*, recoverable as in (1); and COMPULSORY *forfeiture* of the measure, weight, or weighing instrument.

Using, or exposing for sale, weight with forged stamp.

(11) Knowingly to use, sell, or dispose of, or expose for sale any measure, weight, or weighing instrument with such forged stamp thereon, or a weight or measure so increased or diminished (*ib.*).

Weighing instruments.

PENALTY.—FINE not exceeding 10*l.*, and COMPULSORY *forfeiture* of the measure, weight, or weighing instrument. The provisions of s. 32 of the principal Act are extended to all *weighing instruments* used for trade by 52 & 53 Vict. c. 21, s. 1; and every person who has in his possession for use for trade any such instrument must have the same verified and stamped by an inspector with a stamp of verification, under a PENALTY of not exceeding 2*l.*, or for a *second* offence 5*l.*

Weights and weighing instruments to be supplied in markets.

(12) The owners or managers of all public markets are required to provide proper scales and balances and weights and weighing machines, which must be tested twice a year by the inspector. The clerk or toll-collector of a market must weigh or measure, whenever reasonably required, the goods sold or exposed for sale in that market, upon payment of the sum fixed by the owners of the market; and, if the goods are found deficient in weight or measure, he must take the necessary proceedings to recover penalties. In case these provisions are contravened in any respect, the offender is liable to a—

PENALTY not exceeding 5*l.* for every such offence or contravention, recoverable as in (1) (41 & 42 Vict. c. 49, Sched. VI). See also *ante*, pp. 706, 861.

Powers of entry to inspect weights, &c.

(13) By 41 & 42 Vict. c. 49, s. 48, *every inspector authorized in writing* by a justice, and *every justice* within his jurisdiction, may at all reasonable times *inspect* all weights, measures, scales, balances, steelyards, and weighing machines, which are used or in the possession of any person or on any premises *for use for trade*, and may compare such weights and

measures with any local standard, and may detain any weight, measure, scale, balance, or steelyard which is liable to forfeiture, and for this purpose may enter any building or place where he has reason to believe there is any such weight, &c., as he is entitled to inspect. Any person (*i.e.*, presumably, any person *having the custody of and control over the weights, &c.* (*Smith v. Webb*) (*n*)), refusing to produce, or permit the examination of, such weight, &c., or any person obstructing the entry of the inspector or justice, or otherwise obstructing or hindering a justice or inspector when acting under this section, commits an offence. The section now extends, also, to weights and measures used in ascertaining the wages of persons employed in a factory or workshop (1 Edw. 7, c. 22, s. 117); and as to *coal mines*, see 50 & 51 Vict. c. 58, s. 15 (*iv.*).

Refusing to produce weights, &c.; obstructing inspector or justice.

PENALTY.—FINE not exceeding 5*l.*, recoverable as in (1); and, for a similar offence within five years, 10*l.*

Penalty for obstruction.

Under the corresponding section of the repealed Act, 5 & 6 Will. 4, c. 63, s. 28, it was held that a special warrant is not necessary on each occasion of entry, but that a general written authority is sufficient (*Hutchins v. Reeves*) (*o*).

Sale of Coal.

All coal must be sold *by weight* only, except where by the written consent of the purchaser it is sold by boat-load or by waggons or tubs delivered from the colliery into the works of the purchaser; and, where MORE THAN 2 cwt. is delivered by means of a vehicle, before any part of the coal is unloaded a *ticket* must be delivered to the purchaser or his servant, in the form prescribed by Sched. III. of the Weights and Measures Act, 1889. The person attending such vehicle must, if requested to do so, exhibit the ticket to any inspector; and, where the coal is delivered in a vehicle in bulk, the *tare weight* of the vehicle (if it is not provided by the purchaser) must be ascertained by a stamped weighing instrument, marked

Coal must be sold by weight.

Ticket must be given (if sale for *over 2 cwt.* and delivery by cart),

and exhibited to inspector on demand.

(*n*) (1896) 60 J. P. 517.

(*o*) (1842) 11 L. J. M. C. 109; 9 M. & W. 747; 6 Jur 439.

on the vehicle and inserted in the ticket. The weighing of the vehicle, as well as of the coal contained therein, should be performed at or near the place from which the coal is brought, and the weights inserted in the ticket must be the correct weights as so ascertained. The seller, moreover, cannot be convicted of inserting incorrect particulars, except on evidence that the weight inserted was not correct *at the time when it was inserted*. It is not, *e.g.*, sufficient to give evidence of the tare weight of the cart *after delivery* (*Knowles v. Sinclair*) (*p*); see OFFENCE (4), *post*, p. 949). If there is not a weighing instrument near the place where coal is kept for sale by retail, the seller must provide one; and any seller or purchaser, or person in charge of a vehicle, or inspector, or other officer appointed for the purpose, may (subject to the conditions prescribed in s. 27 (i.)) require any coal, or coal cart used for the carriage of coal in bulk, to be weighed or re-weighed by any instrument stamped by an inspector (52 & 53 Vict. c. 21, ss. 20—27).

Seller must
provide
weighing
instrument.

Powers of
entry, testing,
&c.

Quantity less
than repre-
sented by
seller.

Any inspector, or other duly appointed officer of the authority, may at all reasonable times enter any place where coal is kept for sale, and may stop any vehicle carrying coal for sale or delivery, and may test any weights and weighing instruments found in such place or vehicle, and may weigh any load, sack or less quantity so found or in course of delivery (*ib.* s. 29); and, if it appears to a court of summary jurisdiction that the quantity weighed is of *less weight than was represented by the seller*, the person selling or keeping or exposing the coal for sale, *or* the person in charge of the vehicle, *as the case may be*, commits an offence, and is liable to a FINE not exceeding 5*l.* (OFFENCE (9), *post*, p. 950). And, where coal was sold in sacks bearing labels with weights marked on them, in the absence of any evidence that the sacks had been tampered with, the *label* was held to be a representation by the *coal dealer* of the amount of coal contained (*Franklin v. Godfrey*) (*q*). So again, where a seller engaged a contractor to deliver coal to his order, and the delivery ticket was sent to the contractor by the

(*p*) [1898] 1 Q. B. 170; 67 L. J. Q. B. 67; 77 L. T. 624; 46 W. R. 188; 62 J. P. 102.

(*q*) (1894) 63 L. J. M. C. 239; 43 W. R. 46; 10 R. 523.

seller, the *latter* was held to have been properly convicted under this section on the sacks being found to contain short weight, although the carman was the servant of the contractor, and not of the seller (*Baker v. Herd*) (r). And, where a carter (who was not concerned with the weighing or loading and knew nothing of any deficiency) was sent out by coal merchants in charge of a cart to deliver coal, and the sacks labelled "1 cwt." were found to be short in weight, it was held that the merchants should have been convicted and not the carter (*Paul v. Hargreaves*) (s). The statute did not mean to hit an innocent carter. "I think," said *Alverstone*, C.J., "the words '*as the case may be*' were put in to cover the case of a misrepresentation being made by the person who was not the owner of the coal, but the man selling it." On the other hand, the false statements of the servant do not necessarily bind the master, who cannot be convicted unless there has been some *representation by him* as to the weight of coal sold. Thus, where coal was being delivered in five sacks, and the vendor's servant, who was delivering them, on being asked by the inspector, said that they contained 1 cwt. each, whereas each sack was of less weight, it was held that, as there had been no verbal or written representation to the purchaser by the seller, the latter could not be convicted (*Roberts v. Woodward*) (t).

Quantity less than represented—*contd.*

The local authority may make bye-laws, to be approved by the Board of Trade, for (a) regulating the sale of coal in quantities not exceeding 2 cwt.; (b) requiring a weighing instrument of approved form to be carried with any vehicle used for carrying coal to the purchaser; (c) prescribing the distance beyond which coal is not to be required to be carried for the purpose of being weighed or re-weighed; (d) fixing the fees to be paid for the use of any weighing instrument maintained by the authority. By these bye-laws, FINES not exceeding 5*l.* for each breach thereof may be imposed and recovered summarily (52 & 53 Vict. c. 21, s. 28). A bye-law requiring the seller

Local authority may make bye-laws.

(r) (1894) 58 J. P. 413.

(s) [1908] 2 K. B. 289; 77 L. J. K. B. 535; 98 L. T. 751; 6 L. G. R. 530; 72 J. P. 231; 21 Cox, 584; 24 T. L. R. 501.

(t) (1890) 25 Q. B. D. 412; 59 L. J. M. C. 129; 63 L. T. 200; 38 W. R. 770; 55 J. P. 116; 17 Cox, C. C. 134.

Bye-laws—
contd.

to register his name and address in the books of the inspector of weights and measures has been held to be a bye-law “regulating the sale of coal” within this section (*Ward v. Franklin*) (*tt*). The *form* of the weighing instrument to be carried with the vehicle *need not* be specified in the bye-law (*Martin v. Clarke*) (*u*); while it is, perhaps, doubtful whether the bye-law may contain any directions as to *the user* of the instrument (*Kent C. C. v. Humphrey*) (*x*). And, at any rate, a bye-law requiring the person in charge of the vehicle to *re-weigh* the coal upon the request of (*inter alios*) *any constable* is unreasonable, and, therefore, bad (*Alty v. Farrell*) (*z*). Where a bye-law provided for the carrying of a correct stamped weighing instrument, and the dealer carried sacks containing $\frac{1}{2}$ cwt. and 1 cwt. of coal but had in the cart only one weight, viz., a 56 lb. weight, it was held that (although he carried a correct and duly stamped weighing machine) the dealer had committed an offence because he had no proper weights for weighing correctly, *in one operation*, the sacks containing 1 cwt. of coal (*Crick v. Nicholls*) (*a*).

The following OFFENCES may be referred to:—

Selling other-
wise than by
weight.

(1) Selling coal *otherwise than by weight*; unless, with the written consent of the purchaser, by boatload or by waggons or tubs delivered from the colliery into the purchaser's works (52 & 53 Vict. c. 21, s. 20). For *penalty*, see OFFENCE (9), p. 950.

Delivering
more than 2
cwt. by cart
without ticket
or *less* than is
expressed in
ticket.

(2) Selling *more than 2 cwt.* and delivering it by cart without sending or delivering to the purchaser or his servant, *before unloading*, a *ticket* in the form prescribed in Sched. III.; or, delivering a *less quantity* than is expressed in such ticket (*ib.* s. 21, sub-s. 2). It is a sufficient compliance with the requirement for the insertion of the *seller's name* in the ticket, to insert the *name* under which he *carries on business* (*Cameron v. Tyler*) (*b*). Where a

Forms of In-
formation,
post, pp. 1229,
1230.

(*tt*) (1909) 7 L. G. R. 1075; 73 J. P. 506.

(*u*) (1893) 62 L. J. M. C. 178.

(*x*) [1895] 1 Q. B. 903; 59 J. P. 520.

(*z*) [1896] 1 Q. B. 636; 60 J. P. 373; 65 L. J. M. C. 115; 74 L. T. 492.

(*a*) [1905] 1 K. B. 501; 74 L. J. K. B. 283; 92 L. T. 169; 53 W. R. 431; 3 L. G. R. 277; 69 J. P. 144; 21 T. L. R. 235.

(*b*) [1899] 2 Q. B. 94; 68 L. J. Q. B. 759; 47 W. R. 559; 63 J. P. 567.

truck-load of coal, bought at an agreed rate per ton, for delivery on the premises of the purchaser, was delivered by means of *three* carts taking two journeys each and carrying each more than 2 cwt. of coal, it was held that a ticket should have been supplied when the first three cartloads were delivered, and *in respect of each cartload*, and the like when the second three cartloads were delivered (*Stangoe v. Slatter*) (c). But, where coal is sold by weight and delivered in sacks, it is not necessary that there should be a separate ticket with each cartload if a ticket is sent stating that the purchaser will receive a certain quantity of coal in a specified number of sacks, each of given weight. "The purchaser," said *Alverstone, C.J.*, "has only to count the number of sacks as and when they are delivered in order to ascertain whether the total weight corresponds with the weight specified in the ticket" (*Kyle v. Dunsdon*) (d). And if the purchase were for two tons and the notice described the purchaser as receiving "2 tons of small coal in twenty sacks each containing 2 cwt.," there would be no offence if the full amount were delivered, although some of the sacks might be deficient in weight (*Godfrey v. Radford*) (e). If the ticket is duly delivered, but there has been irregularity as to the place or mode of weighing, proceedings should be taken under s. 22, see OFFENCE (4) (*Edwards v. Purnell*) (f). For *penalty*, see OFFENCE (9), p. 950.

- (3) Carter neglecting or refusing to deliver the ticket to the purchaser, or to exhibit it, on request, to an inspector or duly appointed officer (*ib.* s. 21, sub-s. 3). For *penalty*, see OFFENCE (9), p. 950. Carter refusing to deliver ticket.
- (4) Where coal is sold in bulk and vehicle not provided by the purchaser, seller (a) not having cart and coal weighed if more than 2 cwt. is conveyed, (b) not having tare weight marked on cart in such manner Not weighing coal and cart, or not inserting correct particulars.

(c) (1896) 60 J. P. 342.

(d) [1908] 2 K. B. 293; 77 L. J. K. B. 547; 98 L. T. 752; 72 J. P. 292; 6 L. G. R. 578; 24 T. L. R. 505; 21 Cox, 587.

(e) (1896) 75 L. T. 224; 60 J. P. 615.

(f) [1899] 1 Q. B. 449; 68 L. J. Q. B. 272; 79 L. T. 737; 47 W. R. 380; 63 J. P. 249.

as the local authority may approve, (c) not inserting the correct weights of the coal and the cart on the ticket (*ib. s. 22*). It is not necessary that the vehicle should be weighed before every delivery; it is sufficient if it had been weighed so recently and in such circumstances that its correct weight, just before the particular delivery, was ascertained (*Beardsley v. Pike*) (g). And see *ante*, p. 946. For *penalty*, see OFFENCE (9), *infra*.

Carter
making false
statement, &c.

- (5) The person in charge of the cart wilfully making a false statement as to the tare weight of the vehicle, or doing any act by which either the seller or purchaser is defrauded (*ib. s. 23*). For *penalty*, see OFFENCE (9), *infra*.

Fraudulently
delivering
short weight
on small sales.

- (6) Any person, whether the seller or his servant, when a quantity *not exceeding 2 cwt.* is being sold, *fraudulently* delivering less than the quantity agreed on (*ib. s. 24*). For *penalty*, see OFFENCE (9), *infra*.

Refusing to
weigh.

- (7) Person, keeping fixed weighing instrument belonging to local authority, unreasonably refusing to weigh or re-weigh coals or vehicles for coal; or wilfully weighing them so as to defraud the seller or the purchaser (*ib. s. 26*). For *penalty*, see OFFENCE (9), *infra*.

Obstructing
weighing.

- (8) Obstructing the weighing or re-weighing of any coal or coal cart, as authorized by s. 27 (*ante*, pp. 945, 946). This section only applies to a weighing or a re-weighing with a fixed machine, such as is contemplated by ss. 25 and 26; per *Russell, C.J.*, in *Alty v. Farrell* (h). For *penalty*, see OFFENCE (9), *infra*.

Selling, &c.,
less than
quantity
represented.

- (9) Selling, or keeping, or exposing for sale any quantity of coal of less weight than is represented by the seller (*ib. s. 29*). This refers to cases in which an inspector, or duly appointed officer, has exercised his right to weigh coal found in a shop or vehicle (*ante*, p. 946).

Form of In-
formation,
post, p. 1230.

PENALTY
FOR
OFFENCES.
1 2.

PENALTY in respect of each of the OFFENCES (1)–(9) inclusive—FINE not exceeding 5*l.*, and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111). And, as we have already seen (*ante*, p. 937), if

(g) (1904) 90 L. T. 652; 68 J. P. 273; 2 L. G. R. 710; 20 Cox, 648.
(h) [1896] 1 Q. B. at p. 639.

the court be of opinion that the offence was committed WITH INTENT TO DEFRAUD, the offender may (in addition to or in lieu of any fine) be sentenced to IMPRISONMENT for *two months* with or without hard labour.

- (10) Not keeping a weighing instrument at the place where coal is sold *by retail*, if there be not one near; or refusing to weigh coal before delivery, when required to do so (*ib. s. 25*). Not keeping weighing instrument.

PENALTY.—FINE not exceeding 2*l.*, and for any subsequent offence within five years 5*l.*, recoverable as above.

- (11) Obstructing an inspector entering any building or weighing coal in the exercise of his right to weigh coal when in a shop or vehicle (*ib. s. 29*). See *ante*, p. 946. Obstructing inspector.

PENALTY.—FINE not exceeding 5*l.*, and for a second or subsequent offence within five years, 10*l.*

As to the sale of coal in the metropolis, see 1 & 2 Will. 4, c. lxxxvi., ss. 43—59, 79, and 1 & 2 Vict. c. ci., ss. 3, 4. Sale of coal in London.

The Bread Act, 1836 (6 & 7 Will. 4, c. 37) (*ante*, p. 337), also contains stringent provisions concerning the selling of *bread* otherwise than by weight. No penalty, however, can now be imposed on a seller of bread delivering by cart (under s. 7 of that Act), for refusing to weigh the bread, unless he has been first *requested* to do so by or on behalf of the purchaser (52 & 53 Vict. c. 21, s. 32); see also 4 Edw. 7, c. 28, s. 11 (*Ridgway v. Ward (i)*, and *Copeland v. Walker (k)*). BREAD.

As to *weighing cattle* in markets and fairs, see 50 & 51 Vict. c. 27; 54 & 55 Vict. c. 70. Cattle.

WIRELESS TELEGRAPHY.

“Wireless Telegraphy” means any system of communication by telegraph (as defined in the Telegraph Acts) without the aid of wire connecting the points from and at which the messages are sent and received (4 Edw. 7, c. 24, s. 1 (vii.); 9 Edw. 7, c. 46). Every one commits an OFFENCE who

- (a) Establishes a wireless telegraph station without a

Offences against Wireless Telegraphy Act, 1904.

(i) *Ante*, p. 340.

(k) (1891) 62 L. T. 262; 55 J. P. 809.

Wireless
telegraphy—
contd.

licence granted in that behalf by the Postmaster-General; or

(β) Instals or works any apparatus for wireless telegraphy without such a licence.

PENALTY.—FINE not exceeding 10*l.* and, in default of distress, imprisonment *without* hard labour, according to scale (p. 111); also forfeiture of any apparatus installed or worked without licence. This misdemeanour is also punishable on INDICTMENT with a *fine* of 100*l.*, or imprisonment with hard labour for twelve months. 28809

Regulations
as to foreign
ships.

The Postmaster-General may make REGULATIONS as to the working of wireless telegraphy installed on a *foreign ship* whilst in *territorial waters*, and may impose PENALTIES for breach of the regulations, not exceeding 10*l.* and recoverable summarily as above. The regulations may also provide for the forfeiture of the apparatus (4 Edw. 7, c. 24, s. 3 (iv.)). Such regulations have been made, see S. R. & O., 1908, No. 496; for penalty see r. 6 (i.).

The Merchant Shipping Act, 1894 (ss. 684, 686, 693) applies to charges in respect of ships (*ib.*, s. 1 (iv.)).

Order to
prosecute.

No proceedings can be taken against any person under the Act except by order of the Postmaster-General, the Admiralty, the Army Council, or the Board of Trade (*ib.* s. 1 (iii.)). As to British ships on the high seas, see S. R. & O., 1908, No. 208.

Search
warrant.

If a justice is satisfied, by information on oath, that a station has been established or apparatus installed or worked without a licence, he may issue a search warrant authorizing any police officer, or officer appointed by the Postmaster-General, &c., to seize any apparatus used, or apparently intended to be used, for wireless telegraphy (4 Edw. 7, c. 24, s. 1 (iv.)).

WITNESSES.

Tampering
with and
threatening
witnesses.

We have seen (*ante*, p. 396) that a *conspiracy* to accuse anyone falsely of crime, or to obstruct or defeat the due course of justice, is a misdemeanour, and, indeed, any attempt to tamper with a witness and prevent him from giving evidence, whether by bribe, intimidation, or otherwise, is a *misdemeanour* at common law, and is punishable *on indictment*. Mr. Justice Stephen, however,

states the proposition with some limitation, thus: "Everyone commits a misdemeanour who, in order to obstruct the due course of justice, dissuades, hinders or prevents any person *lawfully bound to appear* and give evidence as a witness from so appearing and giving evidence, or endeavours to do so" ("Digest of Crim. Law," 6th edit., p. 113). Where the course of justice is thus sought to be perverted, magistrates have no power to deal summarily with the matter, unless, indeed, witnesses, or intending witnesses, have been actually threatened or molested, in which case the offender may be bound over.

It has even been held that the preparation of false evidence (by tampering with sealed samples of grain) for subsequent use, *in the event of an arbitration taking place*, is an indictable misdemeanour, as being an attempt to pervert the course of justice (*R. v. Vreones*) (l).

WORKMEN.

Everyone commits an offence who, *with a view to compel another person to abstain from doing or to do an act which such other person has a legal right to do or abstain from doing*, wrongfully and without legal authority—

Conspiracy and Protection of Property Act, 1875.

(a) *Uses violence to or intimidates* such other person, or his wife or children, *or injures his property*; or,

Intimidation, &c., of workmen.

(β) *Persistently follows* such other person about from place to place; or,

(γ) *Hides* any tools, clothes, or other *property* owned or used by such other person, or deprives him of or hinders him in the use thereof; or

(δ) *Watches or besets the house* or other place where such other person resides, or works, or carries on business, or happens to be, or the approach to such house or place; or,

(ε) *Follows such other person with two or more other persons in a disorderly manner* in or through any street or road (38 & 39 Vict. c. 86, s. 7).

So far as (δ) is concerned, the law has been modified in important particulars by the Trades Disputes Act, 1906. Picketing.

(l) [1891] 1 Q. B. 360; 60 L. J. M. C. 62; 55 J. P. 537; 17 Cox, 267.

Conspiracy
and Protec-
tion of
Property Act
—*contd.*

It is provided that one *or more* persons, acting on his or their own behalf, or on behalf of a trade union or of an individual employer or firm, may, *in contemplation or furtherance of a trade dispute*, attend at or near a house or place "where a person resides or works or carries on business or happens to be" if he or they so attend merely for the purpose of "*peacefully obtaining or communicating information, or of peacefully persuading any person to work or abstain from working*" (6 Edw. 7, c. 47, s. 2 (i).). As to the meaning of *trade dispute*, see *ante*, p. 397. See further as to cases of picketing, the judgments in *Lyons v. Wilkins* (No. 1) (*m*); also *Charnock v. Court* (*n*); and *Walters v. Green* (*o*). The "watching or besetting" may be for a short time only, and yet be an offence within the statute; nor is the operation of the statute limited to places *habitually* frequented by workmen, nor to places *ejusdem generis* with places of business or residence.

As to what are acts which a person has "a legal right to do," cf. *Farmer v. Wilson* (*p*).

Objection to
summary
trial.

The accused may, on appearing before the court, OBJECT TO BEING TRIED BY A COURT OF SUMMARY JURISDICTION, and thereupon the case will be proceeded with as though he were charged with an indictable offence (38 & 39 Vict. c. 86, s. 9).

APPEAL lies to quarter sessions (s. 12).

Penalty.

PENALTY.—FINE, not exceeding 20*l.*, and, in default of *distress*, imprisonment, *without* hard labour, according to scale (p. 111); *or*, IMPRISONMENT, with or without hard labour, for not more than THREE MONTHS.

Seamen.

The Act of 1875 does not apply to accusations *against* seamen or apprentices to the sea service (s. 16) (*Kennedy v. Cowie*) (*q*). But this section does not exempt from punishment persons who, although they follow the sea as a calling, are not actually employed or engaged on

(*m*) [1896] 1 Ch. 811; 60 J. P. 325; 65 L. J. Ch. 601; 74 L. T. 358; and (No. 2), [1899] 1 Ch. 255; 68 L. J. Ch. 146; 79 L. T. 709; 17 W. R. 291; 63 J. P. 339.

(*n*) [1899] 2 Ch. 35; 68 L. J. Ch. 550; 80 L. T. 564; 63 J. P. 456.

(*o*) [1899] 2 Ch. 698; 81 L. T. 151.

(*p*) (1900) 69 L. J. Q. B. 496; 82 L. T. 566; 64 J. P. 486.

(*q*) *Ante*, p. 397.

board ship within the definition in the Merchant Shipping Act (*R. v. Lynch*) (*r*).

The meaning of "intimidation" was fully considered in a case decided in 1891, where the facts were, shortly, as follows: Workmen, members of a union, complained of non-union men being employed by their master, and a union secretary, on behalf of the union men, gave notice to the employer that unless the non-union men were discharged the union men would strike on a certain day. No violence, or threat of violence, to person or property was used. The non-union men had good reason to believe that they would get no other employment if discharged, but the employer had good ground for expecting that violence would be used, and that great injury would result from a strike, and accordingly dismissed the non-union men. It was held that, as no threat of violence had been used, there was no intimidation, and that the strike notice to the employer was not criminal by reason merely of the employer apprehending injury. The court, however, did not decide that "intimidation" is necessarily limited to threats of personal violence, but left that point for subsequent argument and decision, though it cannot be doubted that this decision goes far to support the view that there must be some language or conduct amounting to threats of personal violence before a conviction for intimidation can follow (*Connor v. Kent, Gibson v. Lawson, and Curran v. Treleaven*) (*s*). The cases are commented on in 55 J. P. 467.

Meaning of
"intimidation."

The meaning of "persistently follow" was, too, discussed in *Smith v. Thomasson* (*t*). There, a foreman, not belonging to the union, left the works during a strike amidst jeers and hostile demonstrations from a crowd assembled at the factory gates. The defendant, who was acting as a picket at the gates, followed a few yards behind the foreman through one or two streets, but did not speak to him; yet the defendant was held to have been rightly convicted.

Meaning of
"persistently follow."

It would seem that a conviction under this statute

The conviction.

(*r*) [1898] 1 Q. B. 61; 67 L. J. Q. B. 59; 77 L. T. 568; 46 W. R. 205.

(*s*) [1891] 2 Q. B. 545; 61 L. J. M. C. 9; 65 L. T. 593; 55 J. P. 485.

(*t*) (1890) 62 L. T. 68; 54 J. P. 596.

should set out specifically the acts which the prosecutor was prevented from doing (*R. v. Mackenzie*) (*u*); but it would be sufficient to allege that the object was, *e.g.*, to compel him to abstain from working in a specified capacity for a particular firm. Cf. *Ex parte Wilkins* (*x*). And, in *Smith v. Moody* (*y*), the words "with a view to compel one A. B. to abstain from working for C. D. at Festing Colliery, &c.," were held to be sufficient. The conviction was, however, quashed, inasmuch as the words "injure the property of the said A. B." did not contain a sufficient, or, indeed, any, description of the property alleged to have been injured.

And see CONSPIRACY, *ante*, p. 397; EMPLOYERS AND WORKMEN ACT, *ante*, p. 443.

NOTICE OF
ACCIDENTS
ACTS, 1894
AND 1906.

By the Notice of Accidents Acts, 1894 and 1906, employers are required in certain cases of accident to their workpeople to give notice, with certain specified particulars of the occurrence, to the Board of Trade. This provision applies to works connected with railways, and other works authorized by a local or personal Act; to the use of machines worked by steam in the open air; to the use of scaffolding for the repairs, &c., of buildings more than 30 feet high, and to the use or working of such building if more than twenty persons (not being domestic servants) are employed therein. The PENALTY for wilful default is 2*l.*, recoverable by distress, and in default, imprisonment, *without* hard labour, according to scale (p. 111) (57 & 58 Vict. c. 28. ss. 1, 2; 6 Edw. 7, c. 53, s. 6).

The Board of Trade may extend these provisions to any other dangerous employment in which twenty persons or more (not being domestic servants) are employed by the same employer; and may issue further orders as to the particulars to be specified in the notice (57 & 58 Vict. c. 28, s. 2). And power is now given to extend these provisions to special classes of dangerous *occurrences*, whether personal injury is caused or not (6 Edw. 7, c. 53, s. 5); see, *e.g.*, an order of December 22nd, 1906, as to

(*u*) [1892] 2 Q. B. 519; 61 L. J. M. C. 181; 67 L. T. 201; 56 J. P. 712.

(*x*) (1895) 64 L. J. M. C. 221; 72 L. T. 567; 59 J. P. 294.

(*y*) Cited *ante*, p. 98.

the bursting of grindstones moved by mechanical power, &c. The Act last cited also deals with notices of accidents in Factories and Workshops (s. 4), see *ante*, p. 459; and repeals or amends sections of the Acts regulating the notification of accidents in coal mines, metalliferous mines, and on railways.

Notice of
accidents—
contd.

In the case of industries to which s. 12 of the Workmen's Compensation Act, 1906, is applied, employers are required, under a PENALTY of 5*l.*, to make annual returns to the Secretary of State, giving particulars of the injuries in respect of which compensation has been paid (6 Edw. 7, c. 58, s. 12).

An Act for the purpose of *limiting the hours of work* below ground in *coal mines* came into operation, as respects Northumberland and Durham, on *January 1st*, 1910, and elsewhere on *July 1st*, 1909 (8 Edw. 7, c. 57, s. 8). A *register* is to be kept of the times of descent and ascent, while a *false entry* therein is to be punishable with a fine of 5*l.* (*ib.* s. 2). The owner, agent, or manager must *make*, publish, and supply copies of, *regulations* for securing compliance with the Act, and *provide means for raising* the men from the mine within the time limited; while contravention of the Act exposes the owner, agent, or manager to a fine of 2*l.*, and any other person to a fine of 10*s.* (*ib.* ss. 6, 7).

Coal Mines
Regulation
Act, 1908.

APPENDIX.

11 & 12 VICT. c. 42.

An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to persons charged with indictable offences.

[14th August, 1848.

WHEREAS it would conduce much to the improvement of the administration of criminal justice within England and Wales if the several statutes and parts of statutes relating to the duties of her majesty's justices of the peace therein with respect to persons charged with indictable offences were consolidated, with such additions and alterations as may be deemed necessary, and that such duties should be clearly defined by positive enactment: Be it therefore declared and enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that in all cases where a charge or complaint (A.) shall be made before any one or more of her majesty's justices of the peace for any county, riding, division, liberty, city, borough or place within England or Wales, that any person has committed or is suspected to have committed any treason, felony, or indictable misdemeanour, or other indictable offence whatsoever, within the limits of the jurisdiction of such justice or justices of the peace, or that any person guilty or suspected to be guilty of having committed any such crime or offence elsewhere out of the jurisdiction of such justice or justices is residing or being or is suspected to reside or be within the limits of the jurisdiction of such justice or justices, then and in every such case, if the person so charged or complained against shall not then be in custody, it shall be lawful for such justice or justices of the peace to issue his or their warrant (B.) to apprehend such person, and to cause him to be brought before such justice or justices, or any other justice or justices for the same county, riding, division, liberty, city, borough or place, to answer to such charge or complaint,

For what offences a justice of the peace may grant a warrant or summons to cause a person charged therewith to be brought before him.

Form, p. 982.

Form, p. 982.

In what cases the party may be summoned instead of issuing a warrant in the first instance.

Form, p. 982.

If the summons be not obeyed, then a warrant may be issued.

Form, p. 983.

Warrant to apprehend for offences committed on the high seas or abroad.

Form, p. 983.

Warrant to apprehend a

and to be further dealt with according to law. Provided always that in all cases it shall be lawful for such justice or justices to whom such charge or complaint shall be preferred, if he or they shall so think fit, instead of issuing in the first instance his or their warrant to apprehend the person so charged or complained against, to issue his or their summons (C.) directed to such person, requiring him to appear before the said justice or justices at a time and place to be therein mentioned, or before such other justice or justices of the same county, riding, division, liberty, city, borough or place as may then be there, and if after being served with such summons in manner hereinafter mentioned he shall fail to appear at such time and place, in obedience to such summons, then and in every such case the said justice or justices, or any other justice or justices of the peace for the same county, riding, division, liberty, city, borough or place, may issue his or their warrant (D.) to apprehend such person so charged or complained against, and cause such person to be brought before him or them, or before some other justice or justices of the peace for the same county, riding, division, liberty, city, borough or place, to answer to the said charge or complaint, and to be further dealt with according to law: Provided nevertheless, that nothing herein contained shall prevent any justice or justices of the peace from issuing the warrant hereinbefore first mentioned at any time before or after the time mentioned in such summons for the appearance of the said accused party.

2. In all cases of indictable crimes or offences of any kind or nature whatsoever committed on the high seas, or in any creek, harbour, haven, or other place in which the Admiralty of England have or claim to have jurisdiction, and in all cases of crimes or offences committed on land beyond the seas, for which an indictment may legally be preferred in any place within England or Wales, it shall be lawful for any one or more of her majesty's justices of the peace for any county, riding, division, liberty, city, borough or place within England or Wales in which any person charged with having committed or with being suspected to have committed any such crime or offence shall reside or be, or shall be supposed or suspected to reside or be, to issue his or their warrant (E.) to apprehend the person so charged, and to cause him to be brought before him or them, or some other justice or justices of the peace for the same county, riding, division, liberty, city, borough or place, to answer to the said charges, and to be further dealt with according to law.

3. Where any indictment shall be found by the grand jury

in any court of oyer and terminer or general gaol delivery, or in any court of general or quarter sessions of the peace, against any person who shall then be at large, and whether such person shall have been bound by any recognizance to appear to answer to the same or not, the person who shall act as clerk of the indictments at such court of oyer and terminer or gaol delivery, or as clerk of the peace at such sessions, at which the said indictment shall be found, shall at any time afterwards, after the end of the sessions of oyer and terminer or gaol delivery or sessions of the peace at which such indictment shall have been found, upon application of the prosecutor, or of any person on his behalf, and on payment of a fee of one shilling, if such person shall not have already appeared and pleaded to such indictment, grant unto such prosecutor or person a certificate (F.) of such indictment having been found; and upon production of such certificate to any justice or justices of the peace for any county, riding, division, liberty, city, borough or place in which the offence shall in such indictment be alleged to have been committed, or in which the person indicted in and by such indictment shall reside or be, or be supposed or suspected to reside or be, it shall be lawful for such justice or justices, and he and they are hereby required, to issue his or their warrant (G.) to apprehend such person so indicted, and to cause him to be brought before such justice or justices, or any other justice or justices for the same county, riding, division, liberty, city, borough or place, to be dealt with according to law, and afterwards, if such person be thereupon apprehended and brought before any such justice or justices, such justice or justices, upon its being proved upon oath or affirmation before him or them that the person so apprehended is the same person who is charged and named in such indictment, shall, without further inquiry or examination, commit (H.) him for trial, or admit him to bail, in manner hereinafter mentioned; or if such person so indicted shall be confined in any gaol or prison for any other offence than that charged in the said indictment, at the time of such application, and production of the said certificate to such justice or justices as aforesaid, it shall be lawful for such justice or justices and he and they are hereby required, upon it being proved before him or them upon oath or affirmation that the person so indicted and the person so confined in prison are one and the same person, to issue his or their warrant (I.) directed to the gaoler or keeper of the gaol or prison in which the person so indicted shall then be confined as aforesaid, commanding him to detain such person in his custody until by her majesty's writ of habeas corpus he shall be removed therefrom, for the purpose

party against
whom an
indictment
is found.

Form, p. 983.

Form, p. 984.

Form, p. 984.

If person
indicted be
already in
prison for
some other
offence,
justice may
order him to
be detained
until removed
by writ of
habeas.

Form, p. 985.

of being tried upon the said indictment, or until he shall otherwise be removed or discharged out of his custody by due course of law.

Power to
justice to
issue warrants
on Sundays.

Justices for
adjoining
counties,
etc., may act
as such for
one county,
etc., while
residing in
another.

All acts of
justice, etc.,
to be valid.

Constables,
etc., apprehending
offenders in
one such
county, etc.,
may take
them before
such justice
in the adjoining
county,
etc., if he act
as a justice
in both.

Justices for
a county,

4. It shall be lawful for any justice or justices of the peace to grant or issue any warrant as aforesaid or any search warrant on a Sunday as well as on any other day.

5. In cases where a justice of the peace for any county, riding, division, liberty, city, borough or place shall be also justice of the peace for a county, riding, division, liberty, city, borough or place next adjoining thereto or surrounded thereby, it shall and may be lawful for such justices of the peace to act as such justice for the one county, riding, division, liberty, city, borough or other place whilst he is residing or happens to be in the other such county, riding, division, liberty, city, borough or other place, in all matters and things hereinbefore or hereafter in this act mentioned; and that all such acts of such justice, and the acts of any constable or other officer in obedience thereto, shall be as valid, good and effectual in the law to all intents and purposes as if such justice at the time he shall so act as aforesaid were in the county, riding, division, liberty, city, borough or other place for which he shall so act; and all constables and other officers for the county, riding, division, liberty, city, borough or place for which such justice shall so act as aforesaid are hereby authorised and required to obey the warrants, orders, directions, act or acts of such justice which in that behalf shall be granted, given or done, and to do and perform their several offices and duties in respect thereof, under the pains and penalties to which any constable or other officer may be liable for a neglect of duty; and any such constable or other peace officer, or any other person, apprehending or taking into custody any person offending against law, and whom he lawfully may and ought to apprehend or take into custody, by virtue of his office or otherwise, in any such county, riding, division, liberty, city, borough or place, may lawfully take and convey such person so apprehended and taken as aforesaid to and before any such justice of the peace for such county, riding, division, liberty, city, borough or place whilst such justice shall be in such adjoining county, riding, division, liberty, city, borough or place as aforesaid, and the said constables and other peace officers, and all such other persons as aforesaid, are hereby authorised and required in all such cases so to act in all things as if the said justice of the peace were within the said county, riding, division, liberty, city, borough or place for which he shall so act.

6. It shall be lawful for any justice or justices of the peace acting for any county at large, or for any riding or division of

such county, to act as such at any place within any city, town or other precinct, being a county of itself, or otherwise having exclusive jurisdiction, and situated within, surrounded by, or adjoining to any such county, riding or division respectively, and that all and every such act and acts, matters and things, to be so done by such justice or justices within such city, town or precinct, as justice or justices for such county, riding or division respectively, shall be as valid and effectual in law as if the same had been done within such county, riding or division respectively, to all intents and purposes whatsoever: Provided always, that nothing in this act contained shall extend to give power to the justices of the peace for any county, riding or division, not being also justices for such city, town or other precinct, or not having authority as justices of the peace therein, or any constable or other officer acting under them, to act or intermeddle in any matters or things arising within any such city, town or precinct, in any manner whatsoever.

etc., may act for it in an adjoining city or place of exclusive jurisdiction.

Not to give power to act, etc., in any matters, etc., arising within the same.

7. And whereas doubts have arisen whether the powers given to justices by an act passed in the session of parliament held in the second and third years of the reign of her present majesty, intituled, "An Act for the better administration of justice in detached parts of counties," are applicable to cases of summary jurisdiction and to acts merely ministerial: Be it hereby declared and enacted, that all the acts of any justice or justices, and of any constable or officer in obedience thereto, shall be as good in relation to any detached part of any county which is surrounded in whole or in part by the county for which such justice or justices acts or act as if the same were to all intents and purposes part of the said county; and all constables and other officers of such detached part are hereby required to obey the warrants, orders and acts of such justice or justices, and to perform their several duties in respect thereof, under the pains and penalties to which any constable or other officer may be liable for a neglect of duty.

For removal of doubts as to powers given to justices, etc., in detached parts of counties under 2 & 3 Vict. c. 82.

8. In all cases where a charge or complaint for any indictable offence shall be made before such justice or justices as aforesaid, if it be intended to issue a warrant in the first instance against the party or parties so charged, an information and complaint thereof (A.) in writing, on the oath or affirmation of the informant or of some witness or witnesses in that behalf, shall be laid before such justice or justices: Provided always, that in all cases where it is intended to issue a summons instead of a warrant in the first instance, it shall not be necessary that such information and complaint shall be in writing, or be sworn to or affirmed in manner aforesaid, but

When charge, etc., is made, if a warrant is to be issued, information, etc., on oath to be laid before justices.

Form, p. 982.

If summons to be issued

instead, information, etc., not necessary to be on oath. No objection allowed for alleged defect in form.

Upon complaint being laid, justices receiving the same may issue summons or warrant for appearance of person charged.

Form, p. 982.

How summons to be served.

If party summoned do not attend, justice may issue a warrant to compel attendance.

Form, p. 983.

No objection allowed for alleged defect in form etc.

in every such case such information and complaint may be by parol merely, and without any oath or affirmation whatsoever to support or substantiate the same : Provided also, that no objection shall be taken or allowed to any such information or complaint for any alleged defect therein in substance or in form, or for any variance between it and the evidence adduced on the part of the prosecution before the justice or justices who shall take the examination of the witnesses in that behalf, as hereinafter mentioned.

9. Upon such information and complaint being so laid as aforesaid the justice or justices receiving the same may, if he or they shall think fit, issue his or their summons or warrant respectively as hereinbefore is directed to cause the person charged as aforesaid to be and appear before him or them, or any other justice or justices of the peace for the same county, riding, division, liberty, city, borough or place to be dealt with according to law ; and every such summons (C.) shall be directed to the party so charged in and by such information, and shall state shortly the matter of such information, and shall require the party to whom it is so directed to be and appear at a certain time and place therein mentioned before the justice who shall issue such summons, or before such other justice or justices of the peace of the same county, riding, division, liberty, city, borough or place as may then be there, to answer to the said charge, and to be further dealt with according to law ; and every such summons shall be served by a constable or other peace officer upon the person to whom it is so directed by delivering the same to the party personally, or if he cannot conveniently be met with then by leaving the same with some person for him at his last or most usual place of abode ; and the constable or other peace officer who shall have served the same in manner aforesaid shall attend at the time and place and before the justices in the said summons mentioned, to depose, if necessary, to the service of such summons ; and if the person so served shall not be and appear before the justice or justices at the time and place mentioned in such summons, in obedience to the same, then it shall be lawful for such justice or justices to issue his or their warrant (D.) for apprehending the party so summoned, and bringing him before such justice or justices, or some other justice or justices of the peace for the same county, riding, division, liberty, city, borough or place, to answer the charge in the said information and complaint mentioned, and to be further dealt with according to law : Provided always, that no objection shall be taken or allowed to any such summons or warrant for any alleged defect therein in substance or in form,

or for any variance between it and the evidence adduced on the part of the prosecution before the justice or justices who shall take the examinations of the witnesses in that behalf, as hereinafter mentioned; but if any such variance shall appear to such justice or justices to be such that the party charged has been thereby deceived or misled, it shall be lawful for such justice or justices, at the request of the party so charged, to adjourn the hearing of the case to some future day, and in the meantime to remand the party so charged, or admit him to bail, in manner hereinafter mentioned.

10. Every warrant (B.) hereafter to be issued by any justice or justices of the peace to apprehend any person charged with any indictable offence shall be under the hand and seal or hands and seals of the justice or justices issuing the same, and may be directed either to any constable or other person by name, or generally to the constable of the parish or other district within which the same is to be executed, without naming him, or to such constable and all other constables or peace officers in the county or other district within which the justice or justices issuing such warrant has or have jurisdiction, or generally to all the constables or peace officers within such last mentioned county or district, and it shall state shortly the offence on which it is founded, and shall name or otherwise describe the offender, and it shall order the person or persons to whom it is directed to apprehend the offender, and bring him before the justice or justices issuing the said warrant, or before some other justice or justices of the peace for the same county, riding, division, liberty, city, borough or place, to answer to the charge contained in the said information, and to be further dealt with according to law and it shall not be necessary to make such warrant returnable at any particular time, but the same may remain in force until it shall be executed; and such warrant may be executed by apprehending the offender at any place within the county, riding, division, liberty, city, borough or place within which the justice or justices issuing the same shall have jurisdiction, or in case of fresh pursuit at any place in the next adjoining county or place, and within seven miles of the border of such first mentioned county, riding, division, liberty, city, borough or place, without having such warrant backed as hereinafter mentioned; and in all cases where such warrant shall be directed to all constables or other peace officers within the county or other district within which the justice or justices issuing the same shall have jurisdiction it shall be lawful for any constable, headborough, tithingman, borsholder or other peace officer for any parish, township, hamlet or place within

Warrant to apprehend parties to be under hand and seal of justice.

Form, p. 982.

How warrant to be directed and to whom.

How and where warrant may be executed.

such county or district, to execute the said warrant within any parish, township, hamlet, or place situate within the jurisdiction for which such justice or justices shall have acted when he or they granted such warrant, in like manner as if such warrant were directed specially to such constable by name, and notwithstanding the place in which such warrant shall be executed shall not be within the parish, township, hamlet or place for which he shall be such constable, headborough, tithingman, borsholder, or other peace officer: Provided always, that no objection shall be taken or allowed to any such warrant for any defect therein in substance or in form, or for any variance between it and the evidence adduced on the part of the prosecution, before the justice or justices who shall take the examinations of the witnesses in that behalf, as hereinafter mentioned; but if any such variance shall appear to such justice or justices to be such that the party charged has been thereby deceived or misled, it shall be lawful for such justice or justices, at the request of the party so charged, to adjourn the hearing of the case to some future day, and in the meantime to remand the party so charged, or to admit him to bail in manner hereinafter mentioned.

No objection allowed for alleged defect in form, etc.

Regulations as to the backing of warrants.

Form, p. 985.

11. If the person against whom any such warrant shall be issued as aforesaid shall not be found within the jurisdiction of the justice or justices by whom the same shall be issued, or if he shall escape, go into, reside, or be, or be supposed or suspected to be, in any place in England or Wales out of the jurisdiction of the justice issuing such warrant, it shall and may be lawful for any justice of the peace for the county or place into which such person shall so escape or go, or in which he shall reside or be, or be supposed or suspected to be, upon proof alone being made on oath of the handwriting of the justice issuing such warrant, to make an indorsement (K.) on such warrant, signed with his name, authorising the execution of such warrant within the jurisdiction of the justice making such indorsement, and which indorsement shall be sufficient authority to the person bringing such warrant, and to all other persons to whom the same was originally directed, and also to all constables and other peace officers of the county or place where such warrant shall be so indorsed, to execute the same in such other county or place, and to carry the person against whom such warrant shall have issued, when apprehended, before the justice or justices of the peace who first issued the said warrant, or before some other justice or justices of the peace in and for the same county, riding, division, city, liberty, borough, or place, or before some justice or justices of the county, riding, division, liberty, city, borough, or place where the offence in the said

warrant mentioned appears therein to have been committed : Provided always, that if the prosecutor, or any of the witnesses upon the part of the prosecution, shall then be in the county or place where such person shall have been so apprehended, the constable or other person or persons who shall have so apprehended such person may, if so directed by the justice backing such warrant, take and convey him before the justice who shall have so backed the said warrant, or before some other justice or justices of the same county or place ; and the said justice or justices may thereupon take the examinations of such prosecutor or witnesses, and proceed in every respect in manner hereinafter directed with respect to persons charged before a justice or justices of the peace with an offence alleged to have been committed in another county or place than that in which such persons have been apprehended.

Proviso.

12. If any person against whom a warrant shall be issued in any county, riding, division, liberty, city, borough, or place in England or Wales, by any justice of the peace, or by any judge of her majesty's court of queen's bench, or justice of oyer and terminer or gaol delivery, for any indictable offence against the laws of that part of the united kingdom, shall escape, go into, reside, or be, or be supposed or suspected to be, in any county or place in that part of the united kingdom called Ireland, or if any person against whom a warrant shall be issued in any county or place in Ireland, by any justice of the peace, or by any judge of her majesty's court of queen's bench there, or any justice of oyer and terminer or gaol delivery, for any crime or offence against the laws of that part of the united kingdom, shall escape, go into, reside, or be, or be supposed or suspected to be, in any county, riding, division, liberty, city, borough, or place in that part of the united kingdom called England or Wales, it shall and may be lawful for any justice of the peace in and for the county or place into which such person shall escape or go, or where he shall reside or be, or be supposed or suspected to be, to indorse (K.) such warrant in manner hereinbefore mentioned, or to the like effect, and which warrant so indorsed shall be a sufficient authority to the person or persons bringing such warrant, and to all persons to whom such warrant was originally directed, and also to all constables or other peace officers of the county or place where such warrant shall be so indorsed, to execute the said warrant in the county or place where the justice so indorsing it shall have jurisdiction, by apprehending the person against whom such warrant shall have been granted, and to convey him before the justice or justices who granted the same, or before some other justice or

English warrants may be backed in Ireland, and *vice versa*, in the event of parties escaping.

Form, p. 985.

Warrants so indorsed to be valid.

justices of the peace in and for the same county or place, and which said justice or justices before whom he shall be so brought shall thereupon proceed in such manner as if the said person had been apprehended in the said last-mentioned county or place.

English warrants may be backed in the Isles of Man, Guernsey, Jersey, Alderney, or Sark, and *vice versa*.

Form, p. 985.

Warrants so indorsed to be valid.

Form, p. 985.

13. If any person against whom a warrant shall be issued in any county, riding, division, liberty, city, borough, or place in England or Wales, by any justice of the peace, or by any judge of her majesty's court of queen's bench, or justices of oyer and terminer or gaol delivery, for any indictable offence, shall escape, go into, reside, or be, or be supposed or suspected to be, in any of the isles of Man, Guernsey, Jersey, Alderney, or Sark, it shall be lawful for any officer within the district into which such accused person shall escape or go, or where he shall reside or be, or be supposed or suspected to be, who shall have jurisdiction to issue any warrant or process in the nature of a warrant for the apprehension of offenders within such district, to indorse (K.) such warrant in the manner hereinbefore mentioned, or to the like effect; or if any person against whom any warrant, or process in the nature of a warrant, shall be issued in any of the isles aforesaid, shall escape, go into, reside, or be, or be supposed or suspected to be, in any county, riding, division, liberty, city, borough, or place in England or Wales, it shall be lawful for any justice of the peace in and for the county or place into which such person shall escape or go, or where he shall reside or be, or be supposed or suspected to be, to indorse (K.) such warrant or process in manner hereinbefore mentioned, and every such warrant or process, so indorsed, shall be a sufficient authority to the person or persons bringing the same, and to all persons to whom the same respectively was originally directed, and also to all constables and peace officers in the county, district, or jurisdiction within which such warrant or process shall be so indorsed, to execute the same within the county, district or place where the justice or officer indorsing the same has jurisdiction, and to convey such offender, when apprehended, into the county or district wherein the justice or person who issued such warrant or process shall have jurisdiction and carry him before such justice or person, or before some other justice or person within the same county or district who shall have jurisdiction to commit such offender to prison for trial, and such justice or person may thereupon proceed in such and the same manner as if the said offender had been apprehended within his jurisdiction.

English or Irish warrants may be

14. If any person against whom a warrant shall be issued by any justice of the peace for any county or place within England or Wales or Ireland, or by any judge of her majesty's

court of queen's bench or justice of oyer and terminer or gaol delivery in England or Ireland, for any crime or offence against the laws of those parts respectively of the united kingdom of Great Britain and Ireland, shall escape, go into, reside or be, or be supposed or suspected to be, in any place in that part of the said united kingdom called Scotland, it shall be lawful for the sheriff or steward depute or substitute, or any justice of the peace of the county or place where such person or persons shall go into, reside, or be, or be supposed or suspected to be, to indorse (K.) the said warrant in manner hereinbefore mentioned, or to the like effect, which warrant so indorsed shall be a sufficient authority to the person or persons bringing such warrant, and to all persons to whom such warrant was originally directed, and also to all sheriffs' officers, stewards' officers, constables, and other peace officers of the county or place where such warrant shall be so indorsed, to execute the same within the county or place where it shall have been so indorsed, by apprehending the person against whom such warrant shall have been granted, and to convey him into the county or place in England, Wales, or Ireland where the justice or justices who first issued the said warrant shall have jurisdiction in that behalf, and to carry him before such justice or justices, or before any other justice or justices of the peace of and for the same county or place, to be there dealt with according to law, and which said justice or justices are hereby authorized and required thereupon to proceed in such and the same manner as if the said offender had been apprehended within his or their jurisdiction.

15. If any person against whom a warrant shall be issued by the lord justice general, lord chief justice clerk, or any of the lords commissioners of justiciary, or by any sheriff or steward depute or substitute, or justice of the peace, of that part of the united kingdom of Great Britain and Ireland called Scotland, for any crime or offence against the laws of that part of the united kingdom, shall escape, go into, reside, or be, or shall be supposed or suspected to be, in any county or place in England or in Ireland, it shall be lawful for any justice of the peace in and for the county or place into which such person shall escape or go, or where he shall reside or be, or shall be supposed or suspected to be, to indorse (K.) the said warrant in manner hereinbefore mentioned, and which said warrant so indorsed shall be a sufficient authority to the person or persons bringing the same, and to all persons to whom the same was originally directed, and also to all constables and other peace officers of the county or place where the justice so indorsing such warrant shall have jurisdiction,

backed in
Scotland.

Form, p. 985.

Warrants so
indorsed to
be valid.

Scotch
warrants
may be
backed in
England or
Ireland.

Form, p. 985.

Warrants so
indorsed to
be valid.

to execute the said warrant in the county or place where it is so indorsed, by apprehending the person against whom such warrant shall have been granted, and to convey him into the county or place in Scotland next adjoining to that part of the united kingdom called England, and carry him before the sheriff or steward depute or substitute, or one of the justices of the peace, of such county or place, and which said sheriff, steward depute or substitute, or justice of the peace, is hereby authorized and required thereupon to proceed in such and the same manner, according to the rules and practice of the law of Scotland, as if the said offender had been apprehended within such county or place in Scotland last aforesaid.

Power to
justices to
summon
witnesses to
attend and
give evidence.

Form. p. 985.

If summons
not obeyed,
warrant may
be issued
to compel
attendance.

Form. p. 986.

In certain
cases warrant
may be issued

16. If it shall be made to appear to any justice of the peace, by the oath or affirmation of any credible person, that any person within the jurisdiction of such justice is likely to give material evidence for the prosecution, and will not voluntarily appear for the purpose of being examined as a witness at the time and place appointed for the examination of the witnesses against the accused, such justice may and is hereby required to issue his summons (L. 1.) to such person, under his hand and seal, requiring him to be and appear at a time and place mentioned in such summons before the said justice, or before such other justice or justices of the peace for the same county, riding, division, liberty, city, borough, or place as shall then be there, to testify what he shall know concerning the charge made against such accused party; and if any person so summoned shall neglect or refuse to appear at the time and place appointed by the said summons, and no just excuse shall be offered for such neglect or refusal, then (after proof upon oath or affirmation of such summons having been served upon such person, either personally or by leaving the same for him with some person at his last or most usual place of abode), it shall be lawful for the justice or justices before whom such person should have appeared to issue a warrant (L. 2.) under his or their hands and seals to bring and have such person at a time and place to be therein mentioned before the justice who issued the said summons, or before such other justice or justices of the peace for the same county, riding, division, liberty, city, borough, or place as shall then be there, to testify as aforesaid, and which said warrant may, if necessary, be backed as hereinbefore is mentioned, in order to its being executed out of the jurisdiction of the justice who shall have issued the same; or if such justice shall be satisfied by evidence upon oath or affirmation that it is probable that such person will not attend to give evidence without being compelled so to

do, then, instead of issuing such summons, it shall be lawful for him to issue his warrant (L. 3.) in the first instance, and which, if necessary, may be backed as aforesaid; and if on the appearance of such person so summoned before the said last-mentioned justice or justices, either in obedience to the said summons or upon being brought before him or them by virtue of the said warrant, such person shall refuse to be examined upon oath or affirmation concerning the premises, or shall refuse to take such oath or affirmation, or, having taken such oath or affirmation, shall refuse to answer such questions concerning the premises as shall then be put to him, without offering any just excuse for such refusal, any justice of the peace then present, and having there jurisdiction, may by warrant (L. 4.) under his hand and seal commit the person so refusing to the common gaol or house of correction for the county, riding, division, liberty, city, borough, or place where such person so refusing shall then be, there to remain and be imprisoned for any time not exceeding seven days, unless he shall in the meantime consent to be examined and to answer concerning the premises.

17. In all cases where any person shall appear or be brought before any justice or justices of the peace charged with any indictable offence, whether committed in England or Wales, or upon the high seas, or on land beyond the sea, or whether such person appear voluntarily upon summons or have been apprehended, with or without warrant, or be in custody for the same or any other offence, such justice or justices, before he or they shall commit such accused person to prison for trial, or before he or they shall admit him to bail, shall, in the presence of such accused person, who shall be at liberty to put questions to any witness produced against him, take the statement (M.) on oath or affirmation of those who shall know the facts and circumstances of the case, and shall put the same into writing, and such depositions shall be read over to and signed respectively by the witnesses who shall have been so examined, and shall be signed also by the justice or justices taking the same; and the justice or justices before whom any such witness shall appear to be examined as aforesaid shall, before such witness is examined, administer to such witness the usual oath or affirmation, which such justice or justices shall have full power and authority to do; and if upon the trial of the person so accused as first aforesaid it shall be proved, by the oath or affirmation of any credible witness, that any person whose deposition shall have been taken as aforesaid is dead, or so ill as not to be able to travel, and if also it be proved that such deposition was taken in the presence of the person so accused,

in the first instance.

Form, p. 986.

Persons appearing on summons, etc., refusing to be examined may be committed.

Form, p. 987.

As to the examination of witnesses.

Form, p. 987.

Justice to administer oath or affirmation.

Depositions of persons who have died, or who are absent, may, in certain cases,

be read in evidence.

and that he or his counsel or attorney had a full opportunity of cross-examining the witness, then, if such deposition purport to be signed by the justice by or before whom the same purports to have been taken, it shall be lawful to read such deposition as evidence in such prosecution, without further proof thereof, unless it shall be proved that such deposition was not in fact signed by the justice purporting to sign the same.

After examination of the accused (*sic*), justice to read depositions taken against him, and caution him as to any statement he may make ;

Form, p. 988.

and inform him that he has nothing to hope or fear from either promise or threat.

18. After the examinations of all the witnesses on the part of the prosecution as aforesaid shall have been completed, the justice of the peace or one of the justices by or before whom such examination shall have been so completed as aforesaid shall, without requiring the attendance of the witnesses, read or cause to be read to the accused the depositions taken against him, and shall say to him these words, or words to the like effect : " Having heard the evidence, do you wish to say anything in answer to the charge ? you are not obliged to say anything unless you desire to do so, but whatever you say will be taken down in writing, and may be given in evidence against you upon your trial ; " and whatever the prisoner shall then say in answer thereto shall be taken down in writing (N.), and read over to him, and shall be signed by the said justice or justices, and kept with the depositions of the witnesses and shall be transmitted with them as herein-after mentioned ; and afterwards upon the trial of the said accused person the same may, if necessary, be given in evidence against him, without further proof thereof, unless it shall be proved that the justice or justices purporting to sign the same did not in fact sign the same : Provided always, that the said justice or justices before such accused person shall make any statement shall state to him, and give him clearly to understand, that he has nothing to hope from any promise of favour, and nothing to fear from any threat which may have been holden out to him to induce him to make any admission or confession of his guilt, but that whatever he shall then say may be given in evidence against him upon his trial, notwithstanding such promise or threat : Provided nevertheless, that nothing herein enacted or contained shall prevent the prosecutor in any case from giving in evidence any admission or confession or other statement of the person accused or charged, made at any time, which by law would be admissible as evidence against such person.

Place where examination taken not to be deemed an open Court, and no person

19. The room or building in which such justice or justices shall take such examinations and statement as aforesaid shall not be deemed an open court for that purpose ; and it shall be lawful for such justice or justices, in his or their discretion, to order that no person shall have access to or be or remain in

such room or building without the consent or permission of such justice or justices, if it appear to him or them that the ends of justice will be best answered by so doing.

20. It shall be lawful for the justice or justices before whom any such witness shall be examined as aforesaid to bind by recognizance (O. 1.) the prosecutor and every such witness to appear at the next court of oyer and terminer or gaol delivery, or superior court of a county palatine, or court of general or quarter sessions of the peace, at which the accused is to be tried, then and there to prosecute, or to prosecute and give evidence, or to give evidence, as the case may be, against the party accused, which said recognizance shall particularly specify the profession, art, mystery, or trade of every such person entering into or acknowledging the same, together with his christian and surname, and the parish, township, or place of his residence, and if his residence be in a city, town, or borough, the recognizance shall also particularly specify the name of the street and the number (if any) of the house in which he resides, and whether he is owner or tenant thereof or a lodger therein; and the said recognizance, being duly acknowledged by the person so entering into the same, shall be subscribed by the justice or justices before whom the same shall be acknowledged, and a notice (O. 2.) thereof, signed by the said justice or justices, shall at the same time be given to the person bound thereby; and the several recognizances so taken, together with the written information (if any), the depositions, the statement of the accused, and the recognizance of bail (if any) in every such case, shall be delivered by the said justice or justices, or he or they shall cause the same to be delivered, to the proper officer of the court in which the trial is to be had, before or at the opening of the said court on the first day of the sitting thereof, or at such other time as the judge, recorder, or justice who is to preside in such court at the said trial shall order and appoint: Provided always, that if any such witness shall refuse to enter into or acknowledge such recognizance as aforesaid it shall be lawful for such justice or justices of the peace, by his or their warrant (P. 1.), to commit him to the common gaol or house of correction for the county, riding, division, liberty, city, borough, or place in which the accused party is to be tried, there to be imprisoned and safely kept until after the trial of such accused party, unless in the meantime such witness shall duly enter into such recognizance as aforesaid before some one justice of the peace for the county, riding, division, liberty, city, borough, or place in which such gaol or house of correction shall be situate: Provided nevertheless, that if afterwards, from want of

to remain without consent.

Power to justice to bind over the prosecutors and witnesses by recognizance.

Form, p. 988.

Form, p. 989.

Recognizance, depositions, etc., to be transmitted to the court in which the trial is to be had.

Witnesses refusing to enter into recognizances may be committed.

Form, p. 989.

sufficient evidence in that behalf or other cause, the justice or justices before whom such accused party shall have been brought shall not commit him or hold him to bail for the offence with which he is charged, it shall be lawful for such justice or justices, or any other justice or justices of the same county, riding, division, liberty, city, borough, or place, by his or their order (P. 2.) in that behalf, to order and direct the keeper of such common gaol or house of correction where such witness shall be so in custody to discharge him from the same, and such keeper shall thereupon forthwith discharge him accordingly.

Form, p. 990.

Power to justice to remand the accused from time to time, not exceeding 8 days, by warrant.

Form, p. 991.

If remand be for 3 days only, by verbal order.

Party accused may be admitted to bail, on the examination being adjourned.

Forms, pp. 991, 992.
If party does not appear

21. If, from the absence of witnesses, or from any other reasonable cause, it shall become necessary or advisable to defer the examination or further examination of the witnesses for any time, it shall be lawful to and for the justice or justices before whom the accused shall appear or be brought, by his or their warrant (Q. 1.), from time to time to remand the party accused for such time as by such justice or justices in their discretion shall be deemed reasonable, not exceeding eight clear days, to the common gaol or house of correction, or other prison, lock-up house, or place of security in the county, riding, division, liberty, city, borough, or place for which such justice or justices shall then be acting; or if the remand be for a time not exceeding three clear days it shall be lawful for such justice or justices verbally to order the constable or other person in whose custody such party accused may then be, or any other constable or person to be named by the said justice or justices in that behalf, to continue or keep such party accused in his custody, and to bring him before the same or such other justice or justices as shall be there acting at the time appointed for continuing such examination: Provided always, that any such justice or justices may order such accused party to be brought before him or them, or before any other justice or justices of the peace for the same county, riding, division, liberty, city, borough, or place, at any time before the expiration of the time for which such accused party shall be so remanded, and the gaoler or officer in whose custody he shall then be shall duly obey such order: Provided also, that, instead of detaining the accused party in custody during the period for which he shall be so remanded, any one justice of the peace before whom such accused party shall so appear or be brought as aforesaid may discharge him, upon his entering into a recognizance (Q. 2. 3.), with or without a surety or sureties, at the discretion of such justice, conditioned for his appearance at the time and place appointed for the continuance of such examination; and if such accused party shall not afterwards appear at the time and place

mentioned in such recognizance, then the said justice, or any other justice of the peace who may then and there be present, upon certifying (Q. 4.) on the back of the recognizance the nonappearance of such accused party, may transmit such recognizance to the clerk of the peace of the county, riding, division, liberty, city, borough, or place within which such recognizance shall have been taken, to be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of such nonappearance of the said accused party.

22. And whereas it often happens that a person is charged before a justice of the peace with an offence alleged to have been committed in another county or place than that in which such person has been apprehended or in which such justice has jurisdiction, and it is necessary to make provision as to the manner of taking the examinations of the witnesses, and of committing the party accused, or admitting him to bail, in such a case ; be it therefore enacted, That whenever a person shall appear or shall be brought before a justice or justices of the peace in the county, riding, division, liberty, city, borough, or place wherein such justice or justices shall have jurisdiction, charged with an offence alleged to have been committed by him in any county or place within England or Wales wherein such justice or justices shall not have jurisdiction, it shall be lawful for such justice or justices, and he and they are hereby required to examine such witnesses, and receive such evidence in proof of such charge as shall be produced before him or them, within his or their jurisdiction ; and if in his or their opinion such testimony and evidence shall be sufficient proof of the charge made against such accused party, such justice or justices shall thereupon commit him to the common gaol or house of correction for the county, riding, division, liberty, city, borough or place where the offence is alleged to have been committed, or shall admit him to bail, as hereinafter mentioned, and shall bind over the prosecutor (if he have appeared before him or them) and the witnesses by recognizance accordingly, as is hereinbefore mentioned ; but if such testimony and evidence shall not in the opinion of such justice or justices be sufficient to put the accused party upon his trial for the offence with which he is so charged, then such justice or justices shall bind over such witnesses as he shall have examined, by recognizance, to give evidence, as hereinbefore is mentioned, and such justice or justices shall, by warrant (R. 1.) under his or their hand and seal or hands and seals, order such accused party to be taken before some justice or justices of the peace in and for the county, riding, division, liberty,

upon recognizance, justice may transmit the same to the clerk of the peace.

Form, p. 992.

If a person be apprehended in one county on charge of an offence committed in another, he may be examined in the former ;

and if evidence be deemed sufficient may be committed to prison.

If insufficient, to be brought before some justice in the latter county.

Form, p. 992.

city, borough or place where and near unto the place where the offence is alleged to have been committed, and shall at the same time deliver the information and complaint, and also the depositions and recognizances so taken by him or them, to the constable who shall have the execution of such last-mentioned warrant, to be by him delivered to the justice or justices before whom he shall take the accused in obedience to the said warrant, and which said depositions and recognizances shall be deemed to be taken in the case, and shall be treated to all intents and purposes as if they had been taken by or before the said last-mentioned justice or justices, and shall, together with such depositions and recognizances as such last-mentioned justice or justices shall take in the matter of such charge against the said accused party, be transmitted to the clerk of the court where the said accused party is to be tried, in the manner and at the time hereinbefore mentioned, if such accused party shall be committed for trial upon the said charge, or shall be admitted to bail; and in case such accused party shall be taken before the justice or justices last aforesaid by virtue of the said last-mentioned warrant, the constable or other person or persons to whom the said warrant shall have been directed, and who shall have conveyed such accused party before such last-mentioned justice or justices, shall be entitled to be paid his costs and expenses of conveying the said accused party before the said justice or justices; and upon the said constable or other person producing the said accused party before such justice or justices, and delivering him into the custody of such person as the said justice or justices shall direct or name in that behalf, and upon the said constable delivering to the said justice or justices the warrant, information (if any), depositions, and recognizances aforesaid, and proving by oath the handwriting of the justice or justices who shall have subscribed the same, such justice or justices to whom the said accused party is so produced shall thereupon forthwith ascertain the sum which ought to be paid to such constable or other person for conveying such accused party and taking him before such justice or justices, as also his reasonable costs and expenses of returning, and thereupon such justice or justices shall make an order (R. 2.) upon the treasurer of the county, riding, division, or liberty, city, borough or place, or if such city, borough or place shall be contributory to the county rate of any county, riding, division or liberty, then upon the treasurer of such county, riding, division or liberty respectively to which it is contributory, for payment to such constable or other person of the sum so ascertained to be payable to him in that behalf, and the said treasurer, upon such order being

As to payment of expenses of conveying the accused into the proper county, etc.

Form, p. 993.

produced to him, shall pay the amount to the said constable or other person producing the same, or to any person who shall present the same to him for payment : Provided always, that if such last-mentioned justice or justices shall not think the evidence against such accused party sufficient to put him upon his trial, and shall discharge him without holding him to bail, every such recognizance so taken by the said first-mentioned justice or justices as aforesaid shall be null and void.

23. Where any person shall appear or be brought before a justice of the peace charged with any felony, or with any assault with intent to commit any felony, or with any attempt to commit any felony, or with obtaining or attempting to obtain property by false pretences, or with a misdemeanor in receiving property stolen or obtained by false pretences, or with perjury or subornation of perjury, or with concealing the birth of a child by secret burying or otherwise, or with wilful or indecent exposure of the person, or with riot, or with assault in pursuance of a conspiracy to raise wages, or assault upon a peace officer in the execution of his duty, or upon any person acting in his aid, or with neglect or breach of duty as a peace officer, or with any misdemeanor for the prosecution of which the costs may be allowed out of any county rate, such justice of the peace may, in his discretion, admit such person to bail, upon his procuring or producing such surety or sureties as in the opinion of such justice will be sufficient to ensure the appearance of such accused person at the time and place when and where he is to be tried for such offence ; and thereupon such justice shall take the recognizance (S. 1. 2.) of the said accused person and his surety or sureties, conditioned for the appearance of such accused person at the time and place of trial, and that he will then surrender and take his trial, and not depart the court without leave ; and in all cases where a person charged with any indictable offence shall be committed to prison to take his trial for the same, it shall be lawful, at any time afterwards, and before the first day of the sitting or session, at which he is to be tried, or before the day to which such sitting or session may be adjourned, for the justice or justices of the peace who shall have signed the warrant for his commitment, in his or their discretion, to admit such accused person to bail in manner aforesaid ; or if such committing justice or justices shall be of opinion that for any of the offences hereinbefore mentioned the said accused person ought to be admitted to bail, he or they shall in such cases, and in all other cases of misdemeanors, certify (S. 3.) on the back of the warrant of commitment his or their consent to such accused party being bailed, stating also the amount of bail

Power to justice to admit to bail persons charged with felony and certain misdemeanors.

8 Edw. 7,
c. 15 (*ante*,
p. 165).

Sed cf. ante,
p. 165.

Forms,
pp. 993, 994.

Justices may admit to bail in the like cases after commitment for trial.

Form, p. 994.

which ought to be required, it shall be lawful for any justice of the peace, attending or being at the gaol or prison where such accused party shall be in custody, on production of such certificate, to admit such accused person to bail in manner aforesaid ; or if it shall be inconvenient for the surety or sureties in such a case to attend at such gaol or prison to join with such accused person in the recognizance of bail, then such committing justice or justices may make a duplicate of such certificate (S. 4.) as aforesaid, and upon the same being produced to any justice of the peace for the same county, riding, division, liberty, city, borough, or place, it shall be lawful for such last-mentioned justice to take the recognizance of the surety or sureties in conformity with such certificate, and upon such recognizance being transmitted to the keeper of such gaol or prison, and produced together with the certificate on the warrant of commitment as aforesaid, to any justice of the peace attending or being at such gaol or prison, it shall be lawful for such last-mentioned justice thereupon to take the recognizance of such accused party, and to order him to be discharged out of custody as to that commitment, as herein-after mentioned ; and where any person shall be charged before any justice of the peace with any indictable misdemeanor other than those hereinbefore mentioned, such justice, after taking the examinations in writing as aforesaid, instead of committing him to prison for such offence, shall admit him to bail in manner aforesaid, or if he have been committed to prison, and shall apply to any one of the visiting justices of such prison, or to any other justice of the peace for the same county, riding, division, liberty, city, borough, or place, before the first day of the sitting or session at which he is to be tried, or before the day to which such sitting or session may be adjourned, to be admitted to bail, such justice shall accordingly admit him to bail in manner aforesaid ; and in all cases where such accused person in custody shall be admitted to bail by a justice of the peace other than the committing justice or justices as aforesaid, such justice of the peace so admitting him to bail shall forthwith transmit the recognizance or recognizances of bail to the committing justice or justices, or one of them, to be by him or them transmitted, with the examinations, to the proper officer : Provided nevertheless, that no justice or justices of the peace shall admit any person to bail for treason, nor shall such person be admitted to bail, except by order of one of her majesty's secretaries of state, or by her majesty's court of queen's bench at Westminster, or a judge thereof in vacation.

24. In all cases where a justice or justices of the peace shall admit to bail any person who shall then be in any prison charged

Form, p. 995.

Justice may admit to bail persons charged with other misdemeanors.

Certain recognizance to be transmitted to committing justices.

No bail in cases of treason but by order of secretary of state, etc.

When justice admits a

with the offence for which he shall be so admitted to bail, such justice or justices shall send to or cause to be lodged with the keeper of such prison a warrant of deliverance (S. 5.) under his or their hand and seal or hands and seals, requiring the said keeper to discharge the person so admitted to bail, if he be detained for no other offence, and upon such warrant of deliverance being delivered to or lodged with such keeper he shall forthwith obey the same. [FORM, p. 995.]

25. And be it enacted, that when all the evidence offered upon the part of the prosecution against the accused party shall have been heard, if the justice or justices of the peace then present shall be of opinion that it is not sufficient to put such accused party upon his trial for any indictable offence, such justice or justices shall forthwith order such accused party, if in custody, to be discharged as to the information then under inquiry; but if, in the opinion of such justice or justices, such evidence is sufficient to put the accused party upon his trial for an indictable offence, or if the evidence given raise a strong or probable presumption of the guilt of such accused party, then such justice or justices shall, by his or their warrant (T. 1.), commit him to the common gaol or house of correction for the county, riding, division, liberty, city, borough, or place to which by law he may now be committed, or, in the case of an indictable offence committed on the high seas, or on land beyond the sea, to the common gaol of the county, riding, division, liberty, city, borough, or place within which such justice or justices shall have jurisdiction, to be there safely kept until he shall be thence delivered by due course of law, or admit him to bail as hereinbefore mentioned.

26. The constable or any of the constables or other persons to whom the said warrant of commitment shall be directed shall convey such accused person therein named or described to the gaol or other prison mentioned in such warrant, and there deliver him, together with such warrant, to the gaoler, keeper, or governor of such gaol or prison, who shall thereupon give such constable or other person so delivering such prisoner into his custody a receipt (T. 2.) for such prisoner, setting forth the state and condition in which such prisoner was when he was delivered into the custody of such gaoler, keeper, or governor; and in all cases where such constable or other person shall be entitled to his costs or expenses for conveying such person to such prison as aforesaid it shall be lawful for the justice or justices who shall have committed the accused party, or for any justice of the peace in and for the said county, riding, division, or other place of exclusive jurisdiction wherein the offence is alleged in the said warrant to have been committed, to ascertain

person to bail after commitment a writ of deliverance shall be sent to him if not detained for any other offence.

If, after hearing evidence against the accused, it is not thought sufficient to warrant commitment he shall be discharged; but if evidence considered sufficient, justice shall, by warrant, commit the accused for trial.

Form, p. 995.

Regulations for conveying prisoners to gaol.

Form, p. 996.

As to payment of costs of conveying prisoners to prison.

Form, p. 996.

the sum which ought to be paid to such constable or other person for conveying such prisoner to such gaol or prison, and also the sum which should reasonably be allowed him for his expenses in returning, and thereupon such justice shall make an order (T. 2.) upon the treasurer of such county, riding, division, liberty, or place of exclusive jurisdiction, or if such place of exclusive jurisdiction shall be contributory to the county rate of any county, riding, or division, then upon the treasurer of such county, riding, or division respectively, or, in the county of Middlesex, upon the overseers of the poor of the parish or place within which the offence is alleged to have been committed, for payment to such constable or other person of the sums so ascertained to be payable to him in that behalf; and the said treasurer or overseers, upon such order being produced to him or them respectively, shall pay the amount thereof to such constable or other person producing the same, or to any person who shall present the same to him or them for payment: Provided nevertheless, that if it shall appear to the justice or justices by whom any such warrant of commitment against such prisoner shall be granted as aforesaid that such prisoner hath money sufficient to pay the expenses, or some part thereof, of conveying him to such gaol or prison, it shall be lawful for such justice or justices, in his or their discretion, to order such money or a sufficient part thereof to be applied to such purpose.

After examinations are completed, defendant entitled to copies of the depositions.

27. At any time after all the examinations aforesaid shall have been completed, and before the first day of the assizes or sessions or other first sitting of the court at which any person so committed to prison or admitted to bail as aforesaid is to be tried, such person may require and shall be entitled to have, of and from the officer or person having the custody of the same, copies of the depositions on which he shall have been committed or bailed, on payment of a reasonable sum for the same, not exceeding at the rate of three halfpence for each folio of ninety words.

Forms in schedule deemed valid.

28. The several forms in the schedule to this act contained, or forms to the same or like effect, shall be deemed good, valid, and sufficient in law.

Metropolitan police magistrates and stipendiary magistrates in other places may act alone.

29. Any one of the magistrates appointed or hereafter to be appointed to act at any of the police courts of the metropolis, and sitting at a police court within the metropolitan police district, and every stipendiary magistrate appointed or to be appointed for any other city, town, liberty, borough, or place, and sitting at a police court or other place appointed in that behalf, shall have full power to do alone whatsoever is authorised by this act to be done by any one or more justice or

justices of the peace ; and that the several forms in the schedule to this act contained may be varied, so far as it may be necessary to render them applicable to the police courts aforesaid, or to the court or other place of sitting of such stipendiary magistrate ; and that nothing in this act contained shall alter or affect in any manner whatsoever any of the powers, provisions, or enactments contained in an act passed in the tenth year of the reign of his late majesty king George the fourth, intituled "An Act for improving the Police in and near the Metropolis," or in an act passed in the third year of the reign of her present majesty, intituled "An Act for further improving the Police in and near the Metropolis," or in an act passed in the same year of the reign of her present majesty, intituled "An Act for regulating the Police Courts in the Metropolis," or in an act passed in the fourth year of the reign of her present majesty, intituled "An Act for better defining the Powers of Justices within the Metropolitan Police district."

Nothing to affect powers, etc., contained in 10 Geo. 4, c. 41, 2 & 3 Vict. c. 47, 2 & 3 Vict. c. 71, and 3 & 4 Vict. c. 84.

30. It shall be lawful for the lord mayor of the city of London, or for any alderman of the said city, for the time being, sitting at the mansion house or guildhall justice rooms in the said city, to do alone any act, at either of the said justice rooms, which by any law now in force, or by any law not containing an express enactment to the contrary hereafter to be made, is or shall be directed to be done by more than one justice ; and nothing in this act contained shall alter or affect in any manner whatsoever any of the powers, provisions or enactments contained in an act passed in the third year of the reign of her present majesty, intituled "An Act for regulating the police in the City of London."

The Lord Mayor, or any Alderman of London, may act alone.

31. The chief magistrate of the metropolitan police court at Bow street for the time being shall be a justice of the peace of and for the county of Berks, if his name be inserted in the commission of the peace for that county, [without possessing the qualification by estate required by law in that behalf, and] without taking any oath of qualification.

Nothing to affect powers, etc., contained in 2 & 3 Vict. c. 94.

32. The town of Berwick-upon-Tweed shall be deemed to be within England for all the purposes of this act, but nothing in this act shall be deemed or taken to extend to Scotland or Ireland, or to the isles of Man, Jersey, or Guernsey save and except the several provisions respectively hereinbefore contained respecting the backing of warrants, and also nothing in this act shall be deemed to alter or affect the jurisdiction or practice of her majesty's court of queen's bench.

Chief magistrate of Bow Street may be a justice for Berks, without qualification. Cf. *ante*, p. 1.

33. And be it enacted, that this act shall commence and take effect on the second day of October in the year of our Lord one thousand eight hundred and forty-eight.

Act to extend to Berwick-upon-Tweed, but not to Scotland or Ireland, etc., except as to backing of warrants.

Information and Complaint for an Indictable Offence.

Sworn before [me], the day and year first above mentioned, at
J. S.

Warrant to Apprehend a Person charged with an Indictable Offence.

Whereas *A. B.*, of [labourer], hath this day been charged upon oath before the undersigned, [one] of his Majesty's justices of the peace in and for the said county of for that he on at did *[&c., stating shortly the offence]. These are therefore to command you, in his Majesty's name, forthwith to apprehend the said *A. B.*, and to bring him before [me], or some other of his Majesty's justices of the peace in and for the said [county], to answer unto the said charge, and to be further dealt with according to law.

Given under my hand and seal, this day of in the
year of our Lord at in the [county] aforesaid.
J. S. (L.S.)

Summons to a Person charged with an Indictable Offence.

To *A. B.*, of [labourer].

Whereas you have this day been charged before the undersigned, [one] of his Majesty's justices of the peace in and for the said [county] of _____ for that you on _____ at _____ **[do., stating shortly the offence]*: These are therefore to command you, in his Majesty's name, to be and appear before me on _____ at _____ o'clock in the forenoon at _____ or before such other justice or justices of the peace for the same [county] as may then be there, to answer to the said charge, and to be further dealt with according to law. Herein fail not.

Given under my hand and seal, this day of in the
year of our Lord at in the [county] aforesaid.
J. S. (L.S.)

* See forms, *post*, pp. 1220 *et seq.*

(D.)

Warrant where the Summons is Disobeyed.

To the constable of and to all other peace officers in the
said [county] of

Whereas on the last past *A. B.*, of [labourer] was
charged before the undersigned, [one] of his Majesty's justices of
the peace in and for the said [county] of for that [d.c., as in
the summons]: And whereas [I] then issued [my] summons to the
said *A. B.*, commanding him, in his Majesty's name, to be and
appear before [me] on at o'clock in the forenoon at
or before such other justice or justices of the peace for the
same [county] as might then be there, to answer to the said charge,
and to be further dealt with according to law: And whereas the
said *A. B.* hath neglected to be or appear at the time and place
appointed in and by the said summons, although it hath now been
proved to me upon oath that the said summons was duly served
upon the said *A. B.*: These are therefore to command you, in his
Majesty's name, forthwith to apprehend the said *A. B.*, and to
bring him before me, or some other of his Majesty's justices of the
peace in and for the said [county], to answer to the said charge,
and to be further dealt with according to law.

Given under my hand and seal, this day of in the
year of our Lord at in the [county] aforesaid.

J. S. (L.S.)

(E.)

*Warrant to Apprehend a Person charged with an Indictable Offence
committed on the High Seas or Abroad.*

*For offences committed on the high seas the warrant may be the same
as in ordinary cases, but describing the offence to have been committed
"on the high seas, out of the body of any county of this realm, and
within the jurisdiction of the Admiralty of England."*

*For offences committed abroad for which the parties may be indicted
in this country the warrant also may be the same as in ordinary cases,
but describing the offence to have been committed "on land out of the
United Kingdom, to wit, at in the kingdom of ," or
"at in the East Indies," or "at in the island of
in the West Indies," as the case may be.*

(F.)

Certificate of Indictment being found.

I hereby certify that at [a court of oyer and terminer and general
gaol delivery, or a court of general quarter sessions of the peace],
holden in and for the [county] of at in the said [county],
on a bill of indictment was found by the grand jury against
A. B., therein described as *A. B.* late of [labourer], for that he

[&c., stating shortly the offence], and that the said *A. B.* hath not appeared or pleaded to the said indictment.

Dated this day of 19 .

J. D.,

Clerk of the indictments on the circuit,

or

Clerk of the peace of and for the said [county].

(G.)

Warrant to Apprehend a Person Indicted.

To the constable of and to all other police officers in the
said [county] of 234081

Whereas it hath been duly certified by *J. D.*, clerk of the indictments on the circuit [or clerk of the peace of and for the [county] of] [that, &c., stating the certificate]: These are therefore to command you, in his Majesty's name, forthwith to apprehend the said *A. B.*, and to bring him before [me], or some other justice or justices of the peace in and for the said [county], to be dealt with according to law.

Given under my hand and seal, this day of in the
year of our Lord at in the [county] aforesaid.

J. S. (L.S.)

(II.)

Warrant of Commitment of a Person Indicted.

To the constable of and to the keeper of the [common
gaol, or house of correction], at in the said [county]
of

Whereas by [my] warrant under [my] hand and seal, dated the
day of after reciting that it had been certified by *J. D.*
[&c., as in the certificate], [I] commanded the constable of and
all other peace officers of the said county, in his Majesty's name,
forthwith to apprehend the said *A. B.*, and to bring him before
[me], the undersigned, [one] of his Majesty's justices of the peace
in and for the said [county], or before some other justice or justices
of the peace in and for the said [county], to be dealt with according
to law: And whereas the said *A. B.* hath been apprehended under
and by virtue of the said warrant, and being now brought before
[me], it is hereupon duly proved to [me] upon oath that the said
A. B. is the same person who is named and charged in and by the
said indictment: These are therefore to command you the said
constable, in his Majesty's name, forthwith to take and safely con-
vey the said *A. B.* to the said [house of correction] at , in the
said [county], and there to deliver him to the keeper thereof,
together with this precept; and I hereby command you the said
keeper to receive the said *A. B.* into your custody in the said house
of correction, and him there safely to keep until he shall be thence
delivered by due course of law.

Given under my hand and seal, this day of in the
year of our Lord at in the [county] aforesaid.

J. S. (L.S.)

(I.)

Warrant to Detain a Person Indicted who is already in Custody for another Offence.

To the keeper of the [common gaol, or house of correction], at
in the said [county] of

Whereas it hath been duly certified by *J. D.*, clerk of the indictments on the circuit [or clerk of the peace of and for the county of], that [*&c.*, stating the certificate]: And whereas [*I am*] informed that the said *A. B.* is in your custody in the said [common gaol] at aforesaid, charged with some offence or other matter; and it being now duly proved upon oath before [*me*] that the said *A. B.* so indicted as aforesaid, and the said *A. B.* in your custody as aforesaid, are one and the same person: These are therefore to command you, in his Majesty's name, to detain the said *A. B.* in your custody in the [common gaol] aforesaid until by his Majesty's writ of habeas corpus he shall be removed therefrom for the purpose of being tried upon the said indictment, or until he shall otherwise be removed or discharged out of your custody by due course of law.

Given under my hand and seal, this day of in the
year of our Lord at in the [county] aforesaid.
J. S. (L.S.)

(K.)

Indorsement in Backing a Warrant.

to wit. { Whereas proof upon oath hath this day been made
before me, one of his Majesty's justices of the peace
for the said [county] of that the name of *J. S.*, to the within
warrant subscribed, is of the handwriting of the justice of the peace
within mentioned; I do therefore hereby authorise *W. T.*, who
bringeth to me this warrant, and all other persons to whom this
warrant was originally directed, or by whom it may lawfully be
executed, and also all constables and other peace officers of the said
[county] of to execute the same within the said last-mentioned
[county],* and to bring the said *A. B.*, if apprehended within the
same [county], before me, or before some other justice or justices of
the peace of the same county, to be dealt with according to law.

Given under my hand, this day of 19 .
J. L.

* The words following this asterisk are to be used only where the justice backing the warrant shall think fit, and may be omitted in backing English warrants in Ireland, Scotland, &c., or in backing Irish or Scotch warrants, &c., in England.

(L. 1.)

Summons of a Witness.

To *E. F.*, of [labourer].

Whereas information hath been laid before the undersigned, [one] of his Majesty's justices of the peace in and for the said [county] of that *A. B.* [*&c.*, as in the summons or warrant against the

accused], and it hath been made to appear to me upon [oath] that you are likely to give material evidence for the [prosecution]: These are therefore to require you to be and to appear before me on next at o'clock in the forenoon at or before such other justice or justices of the peace for the same county as may then be there, to testify what you shall know concerning the said charge so made against the said *A. B.* as aforesaid. Herein fail not.

Given under my hand and seal, this day of in the year of our Lord at in the [county] aforesaid.

J. S. (L.S.)

(L. 2.)

Warrant where a Witness has not Obeyed a Summons.

To the constable of and to all other peace officers of the said [county] of

Whereas information having been laid before the undersigned, [one] of his Majesty's justices of the peace in and for the said [county] of that *A. B.* [*&c., as in the summons*]; and it having been made to appear to [me] upon oath that *E. F.*, of [labourer], was likely to give material evidence for the prosecution, I did duly issue my summons to the said *E. F.*, requiring him to be and appear before me on at or before such other justice or justices of the peace for the same county as might then be there, to testify what he should know respecting the said charge so made against the said *A. B.* as aforesaid: And whereas proof hath this day been made before me upon oath of such summons having been duly served upon the said *E. F.*: And whereas the said *E. F.* hath neglected to appear at the time and place appointed by the said summons, and no just excuse has been offered for such neglect: These are therefore to command you to bring and have the said *E. F.* before me on at o'clock in the forenoon at or before such other justice or justices of the peace for the same [county] as may then be there, to testify what he shall know concerning the said charge so made against the said *A. B.* as aforesaid.

Given under my hand and seal, this day of in the year of our Lord at in the [county] aforesaid.

J. S. (L.S.)

(L. 3.)

Warrant for a Witness in the First Instance.

To the constable of and to all other peace officers in the said [county] of

Whereas information hath been laid before the undersigned, [one] of his Majesty's justices of the peace in and for the said [county] of that [*&c., as in summons*]; and it having been made to appear to [me] upon oath that *E. F.*, of [labourer], is likely to give material evidence for the prosecution, and that it is probable that the said *E. F.* will not attend to give evidence without being compelled so to do: These are therefore to command you to

bring and have the said *E. F.* before me on at o'clock
in the forenoon at or before such other justice or justices of
the peace for the same [county] as may then be there, to testify
what he shall know concerning the said charge so made against
the said *A. B.* as aforesaid.

Given under my hand and seal, this day of in the
year of our Lord at in the [county] aforesaid.
J. S. (L.S.)

(L. 4.)

*Warrant of Commitment of a Witness for refusing to be Sworn or
to give Evidence.*

To the constable of and to the keeper of the [house of
correction] at in the said [county] of

Whereas *A. B.* was lately charged before the undersigned, [one]
of his Majesty's justices of the peace in and for the said [county]
of for that [dec., as in the summons]; and it having been made
to appear to [me] upon oath that *E. F.*, of , was likely to give
material evidence for the prosecution, I duly issued my summons
to the said *E. F.*, requiring him to be and appear before me on
at or before such other justice or justices of the peace
as should then be there, to testify what he should know concerning
the said charge so made against the said *A. B.* as aforesaid; and
the said *E. F.* now appearing before me [or being brought before
me by virtue of a warrant in that behalf, to testify as aforesaid],
and being required to make oath or affirmation as a witness in that
behalf, hath now refused so to do [or being duly sworn as a witness
doth now refuse to answer certain questions concerning the premises
which are here put to him], without offering any just excuse for
such his refusal: These are therefore to command you the said
constable to take the said *E. F.*, and him safely to convey to the
[house of correction] at in the county aforesaid, and there
deliver him to the said keeper thereof, together with this precept;
and I do hereby command you the said keeper of the said [house of
correction] to receive the said *E. F.* into your custody in the said
[house of correction], and him there safely keep for the space of
days for his said contempt, unless he shall in the meantime
consent to be examined and to answer concerning the premises;
and for your so doing this shall be your sufficient warrant.

Given under my hand and seal, this day of in the
year of our Lord at in the [county] aforesaid.
J. S. (L.S.)

(M.)

Depositions of Witnesses.

to wit. { The examination of *C. D.* of [farmer], and *E. F.*,
 { of [labourer], taken on [oath] this day of
 in the year of our Lord at in the [county] afore-
said, before the undersigned, [one] of his Majesty's justices of the
peace for the said [county], in the presence and hearing of *A. B.*,
who is charged this day before [me], for that he the said *A. B.*,

on at [&c., describing the offence as in a warrant of commitment].

This deponent *C. D.* on his [oath] saith as follows [&c., stating the deposition of the witness as nearly as possible in the words he uses. When his deposition is complete let him sign it].

And this deponent *E. F.*, upon his oath, saith as follows [&c.].

The above depositions of *C. D.* and *E. F.* were taken and [sworn] before me at on the day and year first above mentioned.

J. S.

(N.)

Statement of the Accused.

; *A. B.* stands charged before the undersigned, [one] of his Majesty's justices of the peace in and for the [county] aforesaid, this day of in the year of our Lord for that he the said *A. B.* on at [&c., as in the caption of the depositions]; and the said charge being read to the said *A. B.*, and the witnesses for the prosecution, *C. D.* and *E. F.*, being severally examined in his presence, the said *A. B.* is now addressed by me as follows: "Having heard the evidence, do you wish to say anything in answer to the charge? You are not obliged to say anything unless you desire to do so; but whatever you say will be taken down in writing, and may be given in evidence against you upon your trial." Whereupon the said *A. B.* saith as follows:

[Here state whatever the prisoner may say, and in his very words, as nearly as possible. Get him to sign it if he will.]

Taken before me at the day and year first above mentioned.
A. B.
J. S.

(O. 1.)

Recognizance to Prosecute or give Evidence.

: Be it remembered, that on the day of in the year of our Lord *C. D.* of in the township of in the said county, farmer [or *C. D.* of No. 2 Street in the parish of in the borough of surgeon, of which said house he is tenant], personally came before me, one of his Majesty's justices of the peace for the said county, and acknowledged himself to owe to our sovereign lord the King the sum of of good and lawful money of Great Britain, to be made and levied of his goods and chattels, lands and tenements, to the use of our said lord the King, his heirs and successors, if he the said *C. D.* shall fail in the condition indorsed.

Taken and acknowledged, the day and year first above mentioned, at before me

J. S.

Condition to Prosecute.

The condition of the within-written recognizance is such, that whereas one *A. B.* was this day charged before me, *J. S.*, justice of

the peace within mentioned, for that [*&c.*, as in the caption of the depositions], if therefore he the said *C. D.* shall appear at the next court of oyer and terminer or general gaol delivery [*or at the next court of general quarter sessions of the peace*], to be holden in and for the [*county*] of * and there prefer or cause to be preferred a bill of indictment for the offence aforesaid against the said *A. B.*, and there also duly prosecute such indictment, then the said recognizance to be void, or else to stand in full force and virtue.

Condition to Prosecute and give Evidence.

Same as the last form to the asterisk *, and then thus :—“and there prefer or cause to be preferred a bill of indictment against the said *A. B.* for the offence aforesaid, and duly prosecute such indictment and give evidence thereon as well to the jurors who shall then inquire of the said offence as also to them who shall pass upon the trial of the said *A. B.*—then the said recognizance to be void, or else to stand in full force and virtue.”

Condition to give Evidence.

Same as last form but one to the asterisk *, and then thus :—“and there give such evidence as he knoweth upon a bill of indictment to be then and there preferred against the said *A. B.* for the offence aforesaid, as well to the jurors who shall there inquire of the said offence, as also to the jurors who shall pass upon the trial of the said *A. B.* if the said bill shall be found a true bill, then the said recognizance to be void, or else to stand in full force and virtue.”

(O. 2.)

Notice of the said Recognizance to be given to the Prosecutor and his Witnesses.

to wit. { Take notice, that you, *C. D.*, of are bound in the
 { sum of to appear at the next court of [*general*
quarter sessions of the peace] in and for the county of to be
holden at in the said county, and then and there [*prosecute*
and] give evidence against *A. B.* ; and unless you then appear there
and [*prosecute and*] give evidence accordingly, the recognizance
entered into by you will be forthwith levied on you. Dated this
day of 19 .

J. S.

(P. 1.)

Commitment of Witness for Refusing to Enter into the Recognizance.

To the constable of and to the keeper of the [*house of cor-*
rection] at in the said [*county*] of

Whereas *A. B.* was lately charged before the undersigned, [*one*]
of his Majesty's justices of the peace in and for the said [*county*] of
for that [*&c.*, as in the summons to the witness], and it having
been made to appear to [*me*] upon oath that *E. F.*, of was
likely to give material evidence for the prosecution, [*I*] duly issued
[*my* summons to the said *E. F.*, requiring him to be and appear]
before [*me*] on at or before such other justice or justices

of the peace as should then be there, to testify what he should know concerning the said charge so made against the said *A. B.* as aforesaid; and the said *E. F.* now appearing before [*me*], [*or being brought before [me]*] by virtue of a warrant in that behalf, to testify as aforesaid], hath been now examined by [*me*] touching the premises, but being by [*me*] required to enter into a recognizance conditioned to give evidence against the said *A. B.* hath now refused so to do: These are therefore to command you the said constable to take the said *E. F.*, and him safely to convey to the [*house of correction*] at in the [*county*] aforesaid, and there deliver him to the said keeper thereof, together with this precept; and I do hereby command you the said keeper of the said [*house of correction*] to receive the said *E. F.* into your custody in the said [*house of correction*] there to imprison and safely keep him until after the trial of the said *A. B.* for the offence aforesaid, unless in the meantime such *E. F.* shall duly enter into such recognizance as aforesaid in the sum of pounds, before some one justice of the peace for the said [*county*], conditioned in the usual form to appear at the next court of [oyer and terminer or general gaol delivery, or general quarter sessions of the peace], to be holden in and for the [*county*] of and there to give evidence before the grand jury upon any bill of indictment which may then and there be preferred against the said *A. B.* for the offence aforesaid, and also to give evidence upon the trial of the said *A. B.* for the said offence, if a true bill should be found against him for the same.

Given under my hand and seal, this day of in the year of our Lord at in the [*county*] aforesaid.

(P. 2.)

Subsequent Order to Discharge the Witness.

To the keeper of the [*house of correction*] at in the [*county*] of

Whereas by [*my*] order dated the day of [*instant*], reciting that *A. B.* was lately before them, charged before [*me*] for a certain offence therein mentioned, and that *E. F.* having appeared before [*me*], and being examined as a witness for the prosecution in that behalf, refused to enter into a recognizance to give evidence against the said *A. B.*, and [*I*] therefore thereby committed the said *E. F.* to your custody, and required you safely to keep him until after the trial of the said *A. B.* for the offence aforesaid, unless in the meantime he should enter into such recognizance as aforesaid: And whereas for want of sufficient evidence against the said *A. B.* the said *A. B.* has not been committed or holden to bail for the said offence, but on the contrary thereof has been since discharged, and it is therefore not necessary that the said *E. F.* should be detained longer in your custody: These are therefore to order and direct you the said keeper to discharge the said *E. F.* out of your custody as to the said commitment, and suffer him to go at large.

Given under [*my*] hand and seal, this day of in the year of our Lord at in the [*county*] aforesaid.

J. S. (L.S.)

(Q. 1.)

Warrant Remanding a Prisoner.

To the constable of and to the [keeper of the house of correction] at in the said [county] of

Whereas *A. B.* was this day charged before the undersigned, [one] of his Majesty's justices of the peace in and for the said [county] of for that [dec., as in the warrant to apprehend]; and it appears to me to be necessary to remand the said *A. B.*: These are therefore to command you the said constable, in his Majesty's name, forthwith to convey the said *A. B.* to the [house of correction] at in the said [county], and there to deliver him to the keeper thereof, together with this precept; and I hereby command you the said keeper to receive the said *A. B.* into your custody in the said house of correction, and there safely keep him until the day of instant, when I hereby command you to have him at at o'clock in the forenoon of the same day before me, or before such other justice or justices of the peace for the said [county] as may then be there, to answer further to the said charge, and to be further dealt with according to law, unless you shall be otherwise ordered in the meantime.

Given under my hand and seal, this day of in the year of our Lord at in the [county] aforesaid.

J. S. (L.S.)

(Q. 2.)

Recognizance of Bail instead of Remand on an Adjournment of Examination.

: Be it remembered, that on the day of in the year of our Lord *A. B.*, of labourer, *L. M.*, of grocer, and *N. O.*, of butcher, personally came before me, one of his Majesty's justices of the peace for the said [county], and severally acknowledged themselves to owe to our lord the King the several sums following; that is to say, the said *A. B.* the sum of and the said *L. M.* and *N. O.* the sum of each, of good and lawful money of Great Britain, to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of our said lord the King, his heirs and successors, if he the said *A. B.* fail in the condition endorsed.

Taken and acknowledged, the day and year first above mentioned at before me.

J. S.

Condition.

The condition of the within-written recognizance is such, that whereas the within-bounden *A. B.* was this day [or on last past] charged before me, for that [dec., as in the warrant]: And whereas the examination of the witnesses for the prosecution in this behalf is adjourned until the day of instant; if therefore the said *A. B.* shall appear before me on the said day of instant at o'clock in the forenoon, or before such other justice or justices of the peace for the said [county] as may then be there to answer [further] to the said charge, and to be further dealt with according to law, then the said recognizance to be void, or else to stand in full force and virtue.

(Q. 3.)

Notice of such Recognizance to be given to the Accused and his Sureties.

: Take notice, that you, *A. B.*, of are bound in the sum of and your sureties *L. M.* and *N. O.* in the sum of each, that you *A. B.* appear before me *J. S.*, one of his Majesty's justices of the peace for the [county] of on the day of instant at o'clock in the forenoon, at or before such other justice or justices of the peace for the same [county] as may then be there, to answer further to the charge made against you by *C. D.*, and to be further dealt with according to law; and unless you *A. B.* personally appear accordingly the recognizances entered into by yourself and sureties will be forthwith levied on you and them. Dated this day of 19 .
J. S.

(Q. 4.)

Certificate of Non-Appearance to be Endorsed on the Recognizance.

I hereby certify, that the said *A. B.* hath not appeared at the time and place in the above condition mentioned, but therein hath made default, by reason whereof the within-written recognizance is forfeited.

J. S.

(R. 1.)

Warrant to Convey the Accused before a Justice of the County, &c., in which the Offence was committed.

To *W. T.*, constable of and to all other peace officers in the said [county] of

Whereas *A. B.*, of labourer, hath this day been charged before the undersigned, [one] of his Majesty's justices of the peace in and for the said county of for that [&c., as in the warrant to apprehend]: And whereas [I] have taken the deposition of *C. D.*, a witness examined by [me] in this behalf; but inasmuch as [I] am informed that the principal witnesses to prove the said offence against the said *A. B.* reside in the [county] of *C.*, where the said offence is alleged to have been committed: These are therefore to command you the said constable, in his Majesty's name, forthwith to take and convey the said *A. B.* to the said [county] of *C.*, and there carry him before some justice or justices of the peace in and for that [county], and near unto the [parish of *D.*], where the offence is alleged to have been committed, to answer further to the said charge before him or them, and to be further dealt with according to law; and [I] hereby further command you the said constable to deliver to the said justice or justices the information in this behalf, and also the said deposition of *C. D.* now given into your possession for that purpose, together with this precept.

Given under my hand and seal, this day of in the year of our Lord at in the [county] aforesaid.

J. S. (L.S.)

(R. 2.)

Order for Payment of the Constable's Expenses.

To *R. W.*, Esquire, treasurer of the said county of *C.*

Whereas *W. T.*, constable of in the county of *A.*, hath by virtue of and in obedience to a certain warrant of *J. S.*, Esquire [one] of his Majesty's justices of the peace in and for the said county of *A.*, taken and conveyed one *A. B.*, charged for the said *J. S.* with having [*&c.*, *stating shortly the offence*], from in the said county of *A.* to in the said county of *C.*, a distance of miles, and produced the said *A. B.* before me *S. P.*, one of his Majesty's justices of the peace in and for the said county of *C.*, and delivered him into the custody of by [*my*] direction, to answer to the said charge, and further to be dealt with according to law: And whereas the said *W. T.* hath also delivered to [*me*] the said warrant, together with the information in that behalf, and also the deposition of *C. D.* in the said warrant mentioned, and hath proved to [*me*] upon oath the handwriting of the said *J. S.* subscribed to the same: And whereas [*I*] have ascertained that the sum which ought to be paid to the said *W. T.* for conveying the said *A. B.* from the said county of *A.* to the said county of *C.*, and taking him before [*me*], is the sum of and that the reasonable expenses of the said *W. T.* in returning will amount to the further sum of making together the sum of : These are therefore to order you, as such treasurer of the said county of *C.*, to pay unto the said *W. T.* the said sum of according to the form of the statute in such case made and provided, for which payment this order shall be your sufficient voucher and authority.

Given under my hand, this day of 19 .

J. P.

(S. 1.)

Recognizance of Bail.

Be it remembered, that on the day of in the year of our Lord *A. B.*, of *labourer*, *L. M.*, of *grocer*, and *N. O.*, of *butcher*, personally came before [*us*] the undersigned, two of his Majesty's justices of the peace for the said [*county*], and severally acknowledged themselves to owe to our lord the King the several sums following; (that is to say), the said *A. B.* the sum of and the said *L. M.* and *N. O.* the sum of each, of good and lawful money of Great Britain, to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of our said lord the King, his heirs and successors, if he the said *A. B.* fail in the condition indorsed.

Taken and acknowledged, the day and year first above mentioned at before us

*J. S.**J. N.**Condition in Ordinary Cases.*

The condition of the within-written recognizance is such, that whereas the said *A. B.* was this day charged before [*us*], the justices

within mentioned, for that [*&c., as in the warrant*]; if therefore the said *A. B.* will appear at the next court of oyer and terminer and general gaol delivery [*or court of general quarter sessions of the peace*] to be holden in and for the county of and there surrender himself into the custody of the keeper of the [*common gaol*] there, and plead to such indictment as may be found against him by the grand jury, for or in respect of the charge aforesaid, and take his trial upon the same, and not to depart the said court without leave, then the said recognizance to be void, or else to stand in full force and virtue.

Condition where the Defendant is entitled to a Traverse.

The condition of the within-written recognizance is such, that whereas the said *A. B.* was this day charged before [*me*], the justice within mentioned, for that [*&c., as in the warrant or summons*]; if therefore the said *A. B.* will appear at the next court of general quarter sessions of the peace [*or court of oyer and terminer and general gaol delivery*] to be holden in and for the county of and there plead to such indictment as may be found against him by the grand jury for or in respect of the charge aforesaid, and shall afterwards at the then next court of general quarter sessions of the peace [*or court of oyer and terminer and general gaol delivery*] surrender himself into the custody of the keeper of the [*house of correction*] there, and take his trial upon the said indictment, and not depart the said court without leave, then the said recognizance to be void, or else to stand in full force and virtue.

(S. 2.)

Notice of the said Recognizance to be given to the Accused and his Bail.

Take notice that you *A. B.* of are bound in the sum of and your [*sureties L. M. and N. O.*] in the sum of each, that you *A. B.* appear, &c. [*as in the condition of the recognizance*], and not depart the said court without leave; and unless you the said *A. B.* personally appear and plead, and take your trial accordingly, the recognizance entered into by you and your sureties shall be forthwith levied on you and them.

Dated this day of 19 .

J. S.

(S. 3.)

Certificate of Consent to Bail by the committing Justice indorsed on the Commitment.

I hereby certify, that I consent to the within-named *A. B.* being bailed by recognizance, himself in and [*two*] sureties in each.

J. S.

(S. 4.)

The like, on a separate Paper.

Whereas *A. B.* was on the committed by me to the [house of correction] at charged with [etc., naming the offence shortly]:

I hereby certify, that I consent to the said *A. B.* being bailed by recognizance, himself in and [two] sureties in each.

Dated the day of 19 .

J. S.

(S. 5.)

Warrant of Deliverance on Bail being given for a Prisoner already committed.

To the keeper of the [house of correction] at in the said [county] of

Whereas *A. B.*, late of labourer, hath before [us, two] of his Majesty's justices of the peace in and for the said county, entered into his own recognizance, and found sufficient sureties for his appearance at the next court of oyer and terminer and generalgaol delivery [or court of general quarter sessions of the peace] to be holden in and for the county of to answer our sovereign lord the King, for that [etc., as in the commitment] for which he was taken and committed to your said [house of correction]: These are therefore to command you, in his said Majesty's name, that if the said *A. B.* do remain in your custody in the said [house of correction] for the said cause, and for no other, you shall forthwith suffer him to go at large.

Given under our hands and seals, this day of in the year of our Lord at in the [county] aforesaid.

J. S. (L.S.)

J. N. (L.S.)

(T. 1.)

Warrant of Commitment.

To the constable of and to the keeper of the [house of correction] at in the said [county] of

Whereas *A. B.* was this day charged before me, J. S., one of his Majesty's justices of the peace in and for the said [county] of on the oath of *C. D.* of farmer, and others, for that [etc., stating shortly the offence]: These are therefore to command you the said constable of to take the said *A. B.*, and him safely to convey to the [house of correction] at aforesaid, and there to deliver him to the keeper thereof, together with this precept; and I do hereby command you the said keeper of the said [house of correction] to receive the said *A. B.* into your custody in the said [house of correction], and there safely keep him until he shall be thence delivered by due course of law.

Given under my hand and seal, this day of in the year of our Lord at in the [county] aforesaid.

J. S. (L.S.)

(T. 2.)

Gaoler's Receipt to the Constable for the Prisoner, and Justice's Order thereon for Payment of the Constable's Expenses in executing the Commitment.

I hereby certify, that I have received from *W. T.*, constable of the body of *A. B.*, together with a warrant under the hand and seal of *J. S.*, Esquire, one of his Majesty's justices of the peace for the [county] of ; and that the said *A. B.* was [sober, or, as the case may be,] at the time he was so delivered into my custody.

P. K.
Keeper of the house of
correction [or com-
mon gaol] at .
£ s. d.

CONSTABLE'S EXPENSES :			
For conveying the above <i>A. B.</i> from	to	}	
[by railway] at	per mile		
For conveying him to and from the railway station		}	
For subsistence of prisoner whilst in custody after			
commitment	days, at	per day	
For his lodging	nights, at	per night	
Constable	days, at	per day	
[One] assistant [if necessary]	days at		
per day			
Total . . .			£

To *R. W.*, Esquire, treasurer of the said [county] of .

Whereas *W. T.*, constable of in the county of , hath produced unto me, *J. P.*, one of his Majesty's justices of the peace in and for the said county of (wherein the offence hereinafter mentioned is alleged to have been committed), the above receipt of *P. K.*, keeper of the [house of correction] at : and whereas, in pursuance of the statute in such case made and provided, I have ascertained that the sum which ought to be paid to the said *W. T.* for conveying the said *A. B.* from in the said county of to the said house of correction is and that the reasonable expenses of the said *W. T.* in returning will amount to the further sum of making together the sum of : These are therefore to order you, as such treasurer of the said county of , to pay unto the said *W. T.* the said sum of according to the form of the statute in such case made and provided, for which payment this order shall be your sufficient voucher and authority.

Given under my hand, this day of 19 .
J. P.

Received the day of 19 of the treasurer of the [county of]
the sum of being the amount of the above order.
£

11 & 12 VICT. C. 43 (*Jervis' Act*).

An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions, within England and Wales, with respect to summary Convictions and Orders.

[14th August, 1848.

Whereas it would conduce much to the improvement of the administration of justice within England and Wales, so far as respects summary convictions, and orders to be made by her majesty's justices of the peace therein, if the several statutes and parts of statutes relating to the duties of such justices in respect of such summary convictions and orders were consolidated, with such additions and alterations as may be deemed necessary, and that such duties should be clearly defined by such positive enactment: Be it therefore declared and enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that in all cases where an information *(a)* shall be laid before one or more of her majesty's justices of the peace for any county, riding, division, liberty, city, borough, or place within England or Wales, that any person has committed or is suspected to have committed any offence or act within the jurisdiction of such justice or justices for which he is liable by law, upon a summary conviction for the same before a justice or justices of the peace, to be imprisoned or fined, or otherwise punished, and also in all cases where *(a)* a complaint shall be made to any such justice or justices upon which he or they have or shall have authority by law to make any order for the payment of money or otherwise, then and in every such case it shall be lawful for such justice or justices of the peace to issue his or their summons *(b)* directed to such person, stating shortly the matter of such information or complaint, and requiring him to appear at a certain time and place before the same justice or justices, or before such other justice or justices of the same county, riding, division, liberty, city, borough, or place as shall then be there, to answer to the said information or complaint, and to be further dealt with according to law; and every such summons shall be served by a constable or other peace officer, or other person to whom the same shall be delivered, upon the person to whom it is so directed, by delivering the same to the party personally, or by leaving the same with some person for him at his last or most usual place of abode; and the constable, peace officer, or person who shall serve the same in manner aforesaid shall

(a) Form 1,
p. 1092.

In all cases where information shall be laid or complaint made of offences committed, justices may issue summons to persons to answer the same.

(b) Form 2,
p. 1092.

How summons to be served.

Justices not obliged to issue summonses in certain cases. No objection allowed for want of form.

attend at the time and place and before the justices in the said summons mentioned, to depose, if necessary, to the service of the said summons: Provided always, that nothing herein mentioned shall oblige any justice or justices of the peace to issue any such summons in any case where the application for any order of justices is by law to be made *ex parte*: Provided also, that no objection shall be taken or allowed to any information, complaint, or summons, for any alleged defect therein in substance or in form, or for any variance between such information, complaint, or summons and the evidence adduced on the part of the informant or complainant at the hearing of such information or complaint as hereinafter mentioned; but if any such variance shall appear to the justice or justices present and acting at such hearing to be such that the party so summoned and appearing has been thereby deceived or misled, it shall be lawful for such justice or justices, upon such terms as he or they shall think fit, to adjourn the hearing of the case to some future day.

If summons be not obeyed, justices may issue warrant;

(c) Form 6, p. 1093.

or may issue warrant in the first instance;

2. If the person so served with a summons as aforesaid shall not be and appear before the justice or the justices at the time and place mentioned in such summons, and it shall be made to appear to such justice or justices, by oath or affirmation, that such summons was so served in what shall be deemed by such justice or justices to be a reasonable time before the time therein appointed for appearing to the same, then it shall be lawful for such justice or justices, if he or they shall think fit, upon oath or affirmation being made before him or them substantiating the matter of such information or complaint to his or their satisfaction, to issue his or their warrant (c) to apprehend the party so summoned, and to bring him before the same justice or justices, or before some other justice or justices of the peace in and for the same county, riding, division, liberty, city, borough or place, to answer to the said information or complaint, and to be further dealt with according to law; or upon such information being laid as aforesaid for any offence punishable on conviction the justice or justices before whom such information shall have been laid may, if he or they shall think fit, upon oath or affirmation being made before him or them substantiating the matter of such information to his or their satisfaction, instead of issuing such summons as aforesaid, issue in the first instance his or their warrant (c) for apprehending the person against whom such information shall have been so laid, and bringing him before the same justice or justices, or before some other justice or justices of the peace in and for the same county, riding, division, liberty, city, borough or place, to answer to the said information, and to be

further dealt with according to law; or if where a summons shall be so issued as aforesaid, and upon the day and at the place appointed in and by the said summons for the appearance of the party so summoned, such party shall fail to appear accordingly in obedience to such summons, then and in every such case, if it be proved upon oath or affirmation to the justice or justices then present that such summons was duly served upon such party a reasonable time before the time so appointed for his appearance as aforesaid, it shall be lawful for such justice or justices of the peace to proceed *ex parte* to the hearing of such information or complaint, and to adjudicate thereon, as fully and effectually, to all intents and purposes, as if such party had personally appeared before him or them in obedience to the said summons.

3. Every such warrant to apprehend a defendant, that he may answer to any such information or complaint as aforesaid, shall be under the hand and seal or hands and seals of the justice or justices issuing the same, and may be directed either to any constable or other person by name, or generally to the constable of the parish or other district within which the same is to be executed, without naming him, or to such constable and all other constables within the county or other district within which the justice or justices issuing such warrant hath or have jurisdiction, or generally to all the constables within such last-mentioned county or district, and it shall state shortly the matter of the information or complaint on which it is founded, and shall name or otherwise describe the person against whom it has been issued, and it shall order the constable or other person to whom it is directed to apprehend the said defendant, and to bring him before one or more justice or justices of the peace (as the case may require) of the same county, riding, division, liberty, city, borough, or place, to answer to the said information or complaint, and to be further dealt with according to law; and it shall not be necessary to make such warrant returnable at any particular time, but the same may remain in full force until it shall be executed; and such warrant may be executed by apprehending the defendant at any place within the county, riding, division, liberty, city, borough, or place within which the justices issuing the same shall have jurisdiction, or, in case of fresh pursuit, at any place in the next adjoining county or place within seven miles of the border of such first-mentioned county, riding, division, liberty, city, borough, or place, without having such warrant backed as hereinafter mentioned; and in all cases where such warrant shall be directed to all constables or peace officers within the county or other district within which the

or if summons, having been duly served, be not obeyed, the justices may proceed *ex parte*.

Form of warrant.

Form 6,
p. 1093.

Where and how warrant may be executed.

Certain provisions of 11 & 12 Vict. c. 42 as to backing of warrants to extend to warrants issued under this Act.

No objection allowed for want of form in the warrant, or for any variance between it and evidence adduced; but if the party charged is deceived by the variation, he may be committed or discharged upon recognizance:

(d) Form 10, p. 1095.

(e) Form 36, p. 1110.

justice or justices issuing the same shall have jurisdiction, it shall be lawful for any constable, headborough, tithingman, borsholder, or other peace officer for any parish, township, hamlet, or place situate within the limits of the jurisdiction for which such justice or justices shall have acted when he or they granted such warrant, to execute such warrant in like manner as if such warrant were directed specially to such constable by name, and notwithstanding that the place in which such warrant shall be executed shall not be within the parish, township, hamlet, or place for which he shall be such constable, headborough, tithingman, borsholder, or other peace officer; and such of the provisions and enactments contained in a certain act of parliament made and passed in this present session of parliament, intituled "An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to Persons charged with Indictable Offences," as to the backing of any warrant, and the indorsement thereon by a justice of the peace or other officer, authorizing the person bringing such warrant, and all other persons to whom the same was originally directed, to execute the same within the jurisdiction of the justice or officer so making such indorsement, as are applicable to the provisions of this act, shall extend to all such warrants, and to all warrants of commitment issued under and by virtue of this act, in as full and ample a manner as if the said several provisions and enactments were here repeated and made parts of this act: provided always, that no objection shall be taken or allowed to any such warrant to apprehend a defendant so issued upon any such information or complaint as aforesaid under or by virtue of this act, for any alleged defect therein in substance or in form, or for any variance between it and the evidence adduced on the part of the informant or complainant as hereinafter mentioned; but if any such variance shall appear to the justice or justices present and acting at such hearing to be such that the party so apprehended under such warrant has been thereby deceived or misled, it shall be lawful for such justice or justices, upon such terms as he or they shall think fit, to adjourn the hearing of the case to some future day, and in the meantime to commit (d) the said defendant to the house of correction or other prison, lock-up house, or place of security, or to such other custody as the said justice or justices shall think fit, or to discharge him upon his entering into a recognizance (e), with or without surety or sureties, at the discretion of such justice or justices, conditioned for his appearance at the time and place to which such hearing shall be so adjourned: provided always, that in all cases where a

defendant shall be discharged upon recognizance as aforesaid, and shall not afterwards appear at the time and place in such recognizance mentioned, then the said justice who shall have taken the said recognizance, or any justice or justices, who may then be there present, upon certifying (f) upon the back of the said recognizance the nonappearance of the defendant, may transmit such recognizance to the clerk of the peace of the county, riding, division, liberty, city, borough, or place within which such recognizance shall have been taken, to be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of such non-appearance of the said defendant.

but if he fail, to re-appear, the justice may transmit the recognizance to the clerk of the peace.

(f) Form 37, p. 1111.

4. In any information or complaint, or the proceedings thereon, in which it shall be necessary to state the ownership of any property belonging to or in possession of partners, joint tenants, parceners, or tenants in common, it shall be sufficient to name one of such persons, and to state the property to belong to the person so named and another or others, as the case may be, and whenever in any information or complaint, or the proceedings thereon, it shall be necessary to mention, for any purpose whatsoever, any partners, joint tenants, parceners, or tenants in common, it shall be sufficient to describe them in manner aforesaid; and whenever in any such information or complaint, or the proceedings thereon, it shall be necessary to describe the ownership of any work or building made, maintained, or repaired at the expense of any county, riding, division, liberty, city, borough, or place, or of any materials for the making, altering, or repairing of the same, they may be therein described as the property of the inhabitants of such county, riding, division, liberty, city, borough, or place respectively; and all goods provided by parish officers for the use of the poor may in any such information or complaint, or the proceedings thereon, be described as the goods of the churchwardens and overseers of the poor of the parish, or of the overseers of the poor of the township or hamlet, or of the guardians of the poor of the union to which the same belong, without naming any of them; and all materials and tools provided for the repair of highways at the expense of parishes or other districts in which such highways may be situate may be therein described as the property of the surveyor or surveyors of such highways respectively, without naming him or them; and all property of the commissioners of sewers of any district may be described as the property of such commissioners, without naming them.

Description of the property of partners, etc.;

of the property of counties;

of the property in goods provided for the poor;

of the property in materials for parish roads;

of the property of commissioners of sewers.

5. Every person who shall aid, abet, counsel, or procure the commission of any offence which is or hereafter shall be

Prosecution and punishment of

aiders and abettors in the commission of offences.

punishable on summary conviction shall be liable to be proceeded against and convicted for the same, either together with the principal offender, or before or after his conviction, and shall be liable on conviction to the same forfeiture and punishment as such principal offender is or shall be by law liable, and may be proceeded against and convicted either in the county, riding, division, liberty, city, borough or place where such principal offender may be convicted, or in that in which such offence of aiding, abetting, counselling, or procuring may have been committed.

Provisions of 11 & 12 Vict. c. 42 as to justices in one county, etc., acting for another to extend to this Act.

Cf. ante, p. 962.

6. Such of the provisions and enactments in the act aforesaid made and passed in this present session of parliament, intituled "An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to Persons charged with Indictable Offences," whereby a justice of the peace for one county, riding, division, liberty, city, borough, or place may act for the same whilst residing or being in an adjoining county, riding, division, liberty, city, borough, or place of which he is also a justice of the peace, or whereby a justice of the peace for any county at large, riding, division, or liberty may act as such within any city, town, or precinct next adjoining thereto or surrounded thereby, being a county of itself or otherwise having exclusive jurisdiction, as are applicable to the provisions of this act, shall be deemed to be incorporated into this act, and to extend to all acts required of or to be performed by justices of the peace under or by virtue of this act, in as full and ample a manner as if the said provisions and enactments were here repeated and made parts of this act.

Power to justice to summon witnesses to attend and give evidence ;

(g) Form 5, p. 1093.

7. If it shall be made to appear to any justice of the peace, by the oath or affirmation of any credible person, that any person within the jurisdiction of such justice is likely to give material evidence in behalf of the prosecutor or complainant or defendant, and will not voluntarily appear for the purpose of being examined as a witness at the time and place appointed for the hearing of such information or complaint, such justice may and is hereby required to issue his (g) summons to such person under his hand and seal, requiring him to be and appear at a time and place mentioned in such summons before the said justice, or before such other justice or justices of the peace for the same county, riding, division, liberty, city, borough, or place as shall then be there, to testify what he shall know concerning the matter of the said information or complaint ; and if any person so summoned shall neglect or refuse to appear at the time and place appointed by the said summons, and no just excuse shall be offered for such neglect

If summons be not obeyed,

or refusal, then (after proof upon oath or affirmation of such summons having been served upon such person, either personally or by leaving the same for him with some person at his last or most usual place of abode, and that a reasonable sum was paid or tendered to him for his costs and expenses in that behalf), it shall be lawful for the justice or justices before whom such person should have appeared to issue a (*h*) warrant under his or their hands and seals to bring and have such person, at a time and place to be therein mentioned, before the justice who issued the said summons, or before such other justice or justices of the peace for the same county, riding, division, liberty, city, borough, or place as shall then be there, to testify as aforesaid, and which said warrant may, if necessary, be backed as hereinbefore is mentioned, in order to its being executed out of the jurisdiction of the justice who shall have issued the same; or if such justice shall be satisfied by evidence upon oath or affirmation, that it is probable that such person will not attend to give evidence without being compelled so to do, then, instead of issuing such summons, it shall be lawful for him to issue his (*i*) warrant in the first instance, and which, if necessary, may be backed as aforesaid; and if on the appearance of such person so summoned before the said last-mentioned justice or justices, either in obedience to the said summons or upon being brought before him or them by virtue of the said warrant, such person shall refuse to be examined upon oath or affirmation concerning the premises, or shall refuse to take such oath or affirmation, or, having taken such oath or affirmation, shall refuse to answer such questions concerning the premises as shall then be put to him, without offering any just excuse for such refusal, any justice of the peace then present, and having there jurisdiction, may by (*k*) warrant under his hand and seal commit the person so refusing to the common gaol or house of correction for the county, riding, division, liberty, city, borough, or place where such person so refusing shall then be, there to remain and be imprisoned for any time not exceeding seven days, unless he shall in the meantime consent to be examined and to answer concerning the premises.

8. In all cases of complaints upon which a justice or justices of the peace may make an order for the payment of money or otherwise it shall not be necessary that such complaint shall be in writing, unless it shall be required to be so by some particular act of parliament upon which such complaint shall be framed.

9. In all cases of informations for any offences or acts punishable upon summary conviction any variance between such information and the evidence adduced in support thereof

justices may
issue warrant.

(*h*) Form 7,
p. 1094.

In certain
cases may
issue warrant
in the first
instance.

(*i*) Form 8,
p. 1094.

Persons
appearing on
summons, etc.,
refusing to be
examined,
may be
committed.

(*k*) Form 9,
p. 1095.

Complaints
for an order
need not be
in writing.

As to pro-
ceedings upon
informations
for offences

punishable
on summary
convictions.

The party
charged, if
deceived by
variation
between
information
and evidence,
may be
committed
or discharged
upon recog-
nizance :

(*l*) **Form 10,**
p. 1095.

(*m*) **Form 36,**
p. 1110.

Manner of
making com-
plaint or
laying
information.

When war-
rant issued
in the first
instance,
information
to be upon
oath, etc.

Time limited
for such

as to the time at which such offence or act shall be alleged to have been committed shall not be deemed material, if it be proved that such information was in fact laid within the time limited by law for laying the same ; and any variance between such information and the evidence adduced in support thereof as to the parish or township in which the offence or act shall be alleged to have been committed shall not be deemed material, provided that the offence or act be proved to have been committed within the jurisdiction of the justice or justices by whom such information shall be heard and determined ; and if any such variance, or any variance in any other respect between such information and the evidence adduced in support thereof, shall appear to the justice or justices present and acting at the hearing to be such that the party charged by such information has been thereby deceived or misled, it shall be lawful for such justice or justices, upon such terms as he or they shall think fit, to adjourn the hearing of the case to some future day, and in the meantime (*l*) to commit the said defendant to the house of correction or other prison, lock-up house or place of security, or to such other custody as the said justice or justices shall think fit, or to discharge him upon his entering into a (*m*) recognizance with or without surety or sureties, at the discretion of such justice or justices, conditioned for his appearance at the time and place to which such hearing shall be so adjourned.

10. Every such complaint upon which a justice or justices of the peace is or are or shall be authorised by law to make an order, and every information for any offence or act punishable upon summary conviction, unless some particular act of parliament shall otherwise require, may respectively be made or laid without any oath or affirmation being made of the truth thereof ; except in cases of informations where the justice or justices receiving the same shall thereupon issue his or their warrant in the first instance to apprehend the defendant as aforesaid, and in every such case where the justice or justices shall issue his or their warrant in the first instance the matter of such information shall be substantiated by the oath or affirmation of the informant, or by some witness or witnesses on his behalf, before any such warrant shall be issued ; and every such complaint shall be for one matter of complaint only, and not for two or more matters of complaint ; and every such information shall be for one offence only, and not for two or more offences ; and every such complaint or information may be laid or made by the complainant or informant in person, or by his counsel or attorney or other person authorised in that behalf.

11. In all cases where no time is already or shall hereafter

be specially limited for making any such complaint or laying any such information in the act or acts of parliament relating to each particular case, such complaint shall be made and such information shall be laid within six calendar months from the time when the matter of such complaint or information respectively arose.

12. Every such complaint and information shall be heard, tried, determined and adjudged by one or two or more justice or justices of the peace, as shall be directed by the act of parliament upon which such complaint or information shall be framed, or such other act or acts of parliament as there may be in that behalf; and the room or place in which such justice or justices shall sit to hear and try any such complaint or information shall be deemed an open and public court, to which the public generally may have access, so far as the same can conveniently contain them; and the party against whom such complaint is made or information laid shall be admitted to make his full answer and defence thereto, and to have the witnesses examined and cross-examined by counsel or attorney on his behalf; and every complainant or informant in any such case shall be at liberty to conduct such complaint or information respectively and to have the witnesses examined and cross-examined by counsel or attorney on his behalf.

13. If at the day and place appointed in and by the summons aforesaid for hearing and determining such complaint or information the defendant against whom the same shall have been made or laid shall not appear when called, the constable or other person who shall have served him with the summons in that behalf shall then declare upon oath in what manner he served the said summons; and if it appear to the satisfaction of any justice or justices that he duly served the said summons, in that case such justice or justices may proceed to hear and determine the case in the absence of such defendant, or the said justice or justices, upon the non-appearance of such defendant as aforesaid, may, if he or they think fit, issue his or their warrant (n) in manner hereinbefore directed, and shall adjourn the hearing of the said complaint or information until the said defendant shall be apprehended; and when such defendant shall afterwards be apprehended under such warrant he shall be brought before the same justice or justices, or some other justice or justices of the same county, riding, division, liberty, city, borough or place, who shall thereupon, either by his or their warrant (o), commit such defendant to the house of correction or other prison, lock-up house or place of security, or, if he or they think fit, verbally to the custody of the constable or other person who shall have

complaint or information.

As to the hearing of complaints and informations.

Places in which justices shall sit to hear complaints, etc., to be deemed an open court.

Parties allowed to plead by counsel or attorney.

If defendant does not appear, justices may proceed to hear and determine, or issue warrant and adjourn the hearing till defendant is apprehended.

(n) Form 6, p. 1093.

(o) Form 10, p. 1095.

If defendant appear and complainant, etc., does not, justice may dismiss the complaint, etc., or at discretion adjourn hearing and commit or discharge defendant upon recognizance.

(*p*) **Form 10,**
p. 1095.

(*q*) **Form 36,**
p. 1110.

If both parties appear, justice to hear and determine the case.

Proceedings on the hearing of complaints and informa-

apprehended him, or to such other safe custody as he or they shall deem fit, and order the said defendant to be brought up at a certain time and place before such justice or justices of the peace as shall then be there, of which said order the complainant or informant shall have due notice; or, if upon the day and at the place so appointed as aforesaid such defendant shall attend voluntarily in obedience to the summons in that behalf served upon him, or shall be brought before the said justice or justices by virtue of any warrant, then, if the complainant or informant, having had such notice as aforesaid, do not appear, by himself, his counsel or attorney, the said justice or justices shall dismiss such complaint or information, unless for some reason he or they shall think proper to adjourn the hearing of the same unto some other day, upon such terms as he or they shall think fit, in which case such justice or justices may (*p*) commit the defendant in the meantime to the house of correction or other prison, lock-up house or place of security, or to such other custody as such justice or justices shall think fit, or may discharge him upon his entering into (*q*) a recognizance with or without surety or sureties, at the discretion of such justice or justices conditioned for his appearance at the time and place to which such hearing shall be so adjourned; but if both parties appear, either personally or by their respective counsel or attorneys, before the justice or justices who are to hear and determine such complaint or information, then the said justice or justices shall proceed to hear and determine the same.

14. Where such defendant shall be present at such hearing the substance of the information or complaint shall be stated to him, and he shall be asked if he have any cause to show why he should not be convicted, or why an order should not be made against him, as the case may be, and if he thereupon admit the truth of such information or complaint, and show no cause or no sufficient cause why he should not be convicted, or why an order should not be made against him, as the case may be, then the justice or justices present at the said hearing shall convict him or make an order against him accordingly; but if he do not admit the truth of such information or complaint as aforesaid, then the said justice or justices shall proceed to hear the prosecutor or complainant, and such witnesses as he may examine and such other evidence as he may adduce, in support of his information or complaint respectively, and also to hear the defendant and such witnesses as he may examine and such other evidence as he may adduce in his defence, and also to hear such witnesses as the prosecutor or complainant may examine in reply, if such defendant shall have examined

any witnesses or given any evidence other than as to his the defendant's general character; but the prosecutor or complainant shall not be entitled to make any observations in reply upon the evidence given by the defendant, nor shall the defendant be entitled to make any observations in reply upon the evidence given by the prosecutor or complainant in reply as aforesaid; and the said justice or justices, having heard what each party shall have to say as aforesaid, and the witnesses and evidence so adduced, shall consider the whole matter, and determine the same, and shall convict or make an order upon the defendant, or dismiss the information or complaint, as the case may be; and if he or they convict or make an order against the defendant, a minute or memorandum thereof shall then be made, for which no fee shall be paid, and the (r) conviction or (s) order shall afterwards be drawn up by the said justice or justices in proper form, under his or their hand and seal or hands and seals, and he or they shall cause the same to be lodged with the clerk of the peace to be by him filed among the records of the general quarter sessions of the peace; or if the said justice or justices shall dismiss such information or complaint, it shall be lawful for such justice or justices, if he or they shall think fit, being required so to do, to make an (t) order of dismissal of the same, and shall give the defendant in that behalf a (u) certificate thereof, which said certificate afterwards, upon being produced, without further proof, shall be a bar to any subsequent information or complaint for the same matters respectively, against the same party: Provided always, that if the information or complaint in any such case shall negative any exemption, exception, proviso or condition in the statute on which the same shall be framed, it shall not be necessary for the prosecutor or complainant in that behalf to prove such negative, but the defendant may prove the affirmative thereof in his defence, if he would have advantage of the same.

15 [*Every prosecutor of any such information, not having any pecuniary interest in the result of the same, and every complainant in any such complaint as aforesaid, whatever his interest may be in the result of the same, shall be a competent witness to support such information or complaint respectively; and*] Every witness at any such hearing as aforesaid shall be examined upon oath or affirmation, and the justice or justices before whom any such witness shall appear for the purpose of being so examined shall have full power and authority to administer to every such witness the usual oath or affirmation.

16. Before or during such hearing of any such information

(r) Forms 11 & 12, pp. 1096, 1097.

(s) Forms 18 & 19, p. 1100.

(t) Form 21, p. 1102.

(u) Form 23, p. 1103.

Proviso.

Repealed.
57 & 58 Vict.
c. 56.

Witnesses to be examined upon oath, etc.

Power to justices to

adjourn the hearing of cases, and commit defendant, or suffer him to go at large, or discharge him upon his own recognizance.

(*r*) **Form 10,**
p. 1095.

(*w*) **Form 36,**
p. 1110.

Defendant to be served with minute of order before issue of warrant of commitment or distress.

Power of justice to award costs, which shall be specified in conviction or order of dismissal, and may be recovered by distress.

or complaint it shall be lawful for any one justice, or for the justices present, in their discretion, to adjourn the hearing of the same to a certain time and place to be then appointed and stated in the presence and hearing of the party or parties, or their respective attornies or agents then present, and in the meantime the said justice or justices may suffer the defendant to go at large, or may (*v*) commit him to the common gaol or house of correction or other prison, lock-up house, or place of security in the county, riding, division, liberty, city, borough, or place for which such justice or justices shall be then acting, or to such other safe custody as the said justice or justices shall think fit, or may discharge such defendant upon his entering into a (*w*) recognizance, with or without surety or sureties, at the discretion of such justice or justices, conditioned for his appearance at the time and place to which such hearing or further hearing shall be adjourned; and if at the time or place to which such hearing or further hearing shall be so adjourned either or both of the parties shall not appear personally, or by his or their counsel or attornies respectively, before the said justice or justices, or such other justice or justices as shall then be there, it shall be lawful for the justice or justices then there present to proceed to such hearing or further hearing as if such party or parties were present; or if the prosecutor or complainant shall not appear, the said justice or justices may dismiss such information or complaint, with or without costs, as to such justices shall seem fit.

17. In all cases where by any act of parliament authority is given to commit a person to prison, or to levy any sum upon his goods or chattels by distress, for not obeying any order of a justice or justices, the defendant shall be served with a copy of the minute of such order before any warrant of commitment or of distress shall issue in that behalf, and such order or minute shall not form any part of such warrant of commitment or of distress. [Part of section repealed by Summary Jurisdiction Act, 1884, Schd.]

18. In all cases of summary conviction or of orders made by a justice or justices of the peace it shall be lawful for the justice or justices making the same, in his or their discretion, to award and order in and by such conviction or order that the defendant shall pay to the prosecutor or complainant respectively such costs as to such justice or justices shall seem just and reasonable in that behalf; and in cases where such justice or justices, instead of convicting or making an order as aforesaid, shall dismiss the information or complaint, it shall be lawful for him or them, in his or their discretion, in and by his or their order of dismissal to award and order that the

prosecutor or complainant respectively shall pay to the defendant such costs as to such justice or justices shall seem just and reasonable, and the sums so allowed for costs shall in all cases be specified in such conviction or order, or order of dismissal aforesaid, and the same shall be recoverable in the same manner and under the same warrants as any penalty or sum of money adjudged to be paid in and by such conviction or order is to be recoverable; and in cases where there is no such penalty or sum to be thereby recovered, then such costs shall be recoverable by distress and sale of the goods and chattels of the party, and in default of such distress by imprisonment, with or without hard labour, for any time not exceeding* one calendar month, unless such costs shall be sooner paid.

19. Where a conviction adjudges a pecuniary penalty or compensation to be paid, or where an order requires the payment of a sum of money, and by the statute authorizing such conviction or order such penalty, compensation, or sum of money is to be levied upon the goods and chattels of the defendant by distress and sale thereof, and also in cases where by the statute in that behalf no mode of raising or levying such penalty, compensation, or sum of money, or of enforcing the payment of the same, is stated or provided, it shall be lawful for the justice or justices making such conviction or order, or for any justice of the peace for the same county, riding, division, liberty, city, borough, or place, to issue his or their (x) warrant of distress for the purpose of levying the same, which said warrant of distress shall be in writing under the hand and seal of the justice making the same; and if, after delivery of such warrant of distress to the constable or constables to whom the same shall have been directed to be executed, sufficient distress shall not be found within the limits of the jurisdiction of the justice granting such warrant, then, upon proof alone being made on oath of the handwriting of the justice granting such warrant before any justice of any other county or place, such justice of such other county or place shall thereupon make an (y) indorsement on such warrant, signed with his hand, authorizing the execution of such warrant, within the limits of his jurisdiction, by virtue of which said warrant and indorsement the penalty or sum aforesaid, and costs, or so much thereof as may not have been before levied or paid, shall and may be levied by the person bringing such warrant, or by the person or persons to whom such warrant was originally directed, or by any constable or other peace officer of such last-mentioned county or place, by distress and sale of the goods and chattels of the defendant in such other county or place.

**See* cf. 42 & 43 Vict. c. 49, s. 5, *post*, p. 1026.

Power to justice to issue warrant of distress.

(x) **Forms 24 & 25, pp. 1104, 1105.**

How warrant to be backed.

(y) **Form 35, p. 1110.**

Justice, after issuing warrant, may suffer defendant to go at large, or order him into custody until return be made, unless he gives security by recognizance.

In default of sufficiency of distress, justice may commit defendant to prison.

(z) **Form 27,**
p. 1106.

(a) **Form 31,**
p. 1108.

20. In all cases where a justice of the peace shall issue any such warrant of distress it shall be lawful for him to suffer the defendant to go at large, or verbally or by a written warrant in that behalf, to order the defendant to be kept and detained in safe custody until return shall be made to such warrant of distress, unless such defendant shall give sufficient security, by recognizance or otherwise, to the satisfaction of such justice, for his appearance before him at the time and place appointed for the return of such warrant of distress, or before such other justice or justices for the same county, riding, division, liberty, city, borough, or place as may then be there.

21. If at the time and place appointed for the return of any such warrant of distress the constable who shall have had the execution of the same (z) shall return that he could find no goods or chattels or no sufficient goods or chattels whereon he could levy the sum or sums therein mentioned, together with the costs of or occasioned by the levying of the same, it shall be lawful for the justice of the peace before whom the same shall be returned to issue his warrant (a) of commitment under his hand and seal, directed to the same or any other constable, reciting the conviction or order shortly, the issuing of the warrant of distress, and the return thereto, and requiring such constable to convey such defendant to the house of correction, or if there be no house of correction then to the common gaol of the county, riding, division, liberty, city, borough, or place for which such justice shall then be acting, and there to deliver him to the keeper thereof, and requiring such keeper to receive the defendant into such house of correction or gaol, and there to imprison him, or to imprison him and keep him to hard labour, in such manner and for such time as shall have been directed and appointed by the statute on which the conviction or order mentioned in such warrant of distress was founded, unless the sum or sums adjudged to be paid, and all costs and charges of the distress, and also the costs and charges of the commitment and conveying of the defendant to prison, if such justice shall think fit so to order (the amount thereof being ascertained and stated in such commitment), shall be sooner paid.

In all cases of penalties, convictions, or orders, where the statute provides no remedy in default of distress,

22. And whereas by some acts of parliament justices of the peace are authorized to issue warrants of distress to levy penalties, [*or other sums recovered before them by distress and sale of the offender's goods*] but no further remedy is thereby provided in case no sufficient distress be found whereon to levy such penalties; be it therefore enacted, that in all such cases, and in all cases of convictions [*or orders*] where the statute on which the same are respectively founded provides no remedy,

in case it shall be returned to a warrant of distress thereon that no sufficient goods of the party against whom such warrant shall have been issued can be found, it shall nevertheless be lawful for the justice to whom such return is made, or to any other justice of the peace for the same county, riding, division, liberty, city, borough, or place, if he or they shall think fit, by his warrant as aforesaid, to commit the defendant to the house of correction or common gaol as aforesaid for any term not exceeding three calendar months, unless the sum or sums adjudged to be paid, and all costs and charges of the distress, and of the commitment and conveying of the defendant to prison (the amount thereof being ascertained and stated in such commitment), shall be sooner paid.

23. In all cases where the statute by virtue of which a conviction for a penalty or compensation, or an order for the payment of money, is made, makes no provision for such penalty or compensation or sum being levied by distress, but directs that if the same be not paid forthwith, or within a certain time therein mentioned, or to be mentioned in such conviction or order, the defendant shall be imprisoned, or imprisoned and kept to hard labour, for a certain time, unless such penalty, compensation, or sum shall be sooner paid, in every such case such penalty, compensation, or sum shall not be levied by distress; but if the defendant do not pay the same, together with costs, if awarded, forthwith, or at the time specified in such conviction or order for the payment of the same, it shall be lawful for the justice or justices making such conviction or order, or for any other justice of the peace for the same county, riding, division, liberty, city, borough, or place, to issue his or their (b) warrant of commitment under his or their hand and seal or hands and seals, requiring the constable or constables to whom the same shall be directed to take and convey such defendant to the house of correction or common gaol for the county, riding, division, liberty, city, borough, or place aforesaid, as the case may be, and there to deliver him to the keeper thereof, and requiring such keeper to receive such defendant into such house of correction or gaol, and there to imprison him, or to imprison him and keep him to hard labour, as the case may be, for such time as the statute on which such conviction or order is founded as aforesaid shall direct, unless the sum or sums adjudged to be paid, and also the costs and charges of taking and conveying the defendant to prison, if such justice or justices shall think fit so to order, shall be sooner paid.

24. Where a conviction does not order the payment of any penalty, but that the defendant be imprisoned, or imprisoned

justice may
commit
defendant
to prison.

Sed cf. S. J.
Act, 1879,
ss. 6, 35, 47,
55, *post*,
pp. 1027,
1045, 1051,
1055.

Power to
justices to
order com-
mitment in
the first
instance for
non-payment
of a penalty
or of a sum
ordered to
be paid.

(b) Forms 32
& 34, p. 1109.

Power to
justices to

order commitment where the conviction is not for a penalty, nor the order for payment of money and the punishment is by imprisonment, etc.

Costs may be levied by distress, and in default defendant may be committed for a further term.

(c) Form 25, p. 1105.

(d) Form 31, p. 1108.

(e) But see now S. J. Act, 1879, s. 5, *post*, p. 1026.

Imprisonment for a subsequent offence to commence at expiration of that for previous offence.

and kept to hard labour, for his offence, or where an order is not for the payment of money, but for the doing of some other act, and directs that in case of the defendant's neglect or refusal to do such act he shall be imprisoned, or imprisoned and kept to hard labour, and the defendant neglects or refuses to do such act, in every such case it shall be lawful for such justice or justices making such conviction or order, or for some other justice of the peace for the same county, riding, division, liberty, city, borough, or place, to issue his or their warrant of commitment under his or their hand and seal or hands and seals, and requiring the constable or constables to whom the same shall be directed, to take and convey such defendant to the house of correction or common gaol for the same county, riding, division, liberty, city, borough, or place, as the case may be, and there to deliver him to the keeper thereof, and requiring such keeper to receive such defendant into such house of correction or gaol, and there to imprison him, or to imprison him and keep him to hard labour, as the case may be, for such time as the statute on which such conviction or order is founded as aforesaid shall direct; and in all such cases, where by such conviction or order any sum for costs shall be adjudged to be paid by the defendant to the prosecutor or complainant, such sum may, if the justice or justices shall think fit, be levied by (c) warrant of distress in manner aforesaid, and in default of distress the defendant may, if such justice or justices shall think fit, (d) be committed to the same house of correction or common gaol in manner aforesaid, there to be imprisoned for (e) any time not exceeding one calendar month, to commence at the termination of the imprisonment he shall then be undergoing, unless such sum for costs, and all costs and charges of the said distress, and also the costs and charges of the commitment and conveying of the defendant to prison, if such justice or justices shall think fit so to order, shall be sooner paid.

25. Where a justice or justices of the peace shall upon any such information or complaint as aforesaid adjudge the defendant to be imprisoned, and such defendant shall then be in prison undergoing imprisonment upon a conviction for any other offence, the warrant of commitment for such subsequent offence shall in every such case be forthwith delivered to the gaoler to whom the same shall be directed; and it shall be lawful for the justice or justices issuing the same, if he or they shall think fit, to award and order therein and thereby that the imprisonment for such subsequent offence shall commence at the expiration of the imprisonment to which such defendant shall have been previously adjudged or sentenced.

26. Where any information or complaint shall be dismissed with costs as aforesaid, the sum which shall be awarded for costs in the order for dismissal may be (f) levied by distress on the goods and chattels of the prosecutor or complainant in manner aforesaid.

27. After an appeal against any such conviction or order as aforesaid shall be decided, if the same shall be decided in favour of the respondents, the justice or justices who made such conviction or order, or any other justice of the peace of the same county, riding, division, liberty, city, borough, or place, may issue such warrant of distress or commitment as aforesaid for execution of the same, as if no such appeal had been brought; and if upon any such appeal the court of quarter sessions shall order either party to pay costs, such order shall direct such costs to be paid to the clerk of the peace of such court, to be by him paid over to the party entitled to the same, and shall state within what time such costs shall be paid; and if the same shall not be paid within the time so limited, *and the party ordered to pay the same shall not be bound by any recognizance conditioned to pay such costs*, such clerk of the peace or his deputy, upon application of the party entitled to such costs, or of any person on his behalf, and on payment of a fee of one shilling, shall grant to the party so applying a (g) certificate that such costs have not been paid; and upon production of such certificate to any justice or justices of the peace for the same county, riding, division, liberty, city, borough, or place, it shall be lawful for him or them to enforce the payment of such costs by warrant of distress in manner aforesaid.

28. In all cases where any person against whom a warrant of distress shall issue as aforesaid shall pay or tender to the constable having the execution of the same the sum or sums in such warrant mentioned, together with the amount of the expenses of such distress up to the time of such payment or tender, such constable shall cease to execute the same; and in all cases in which any person shall be imprisoned as aforesaid for non-payment of any penalty or other sum he may pay or cause to be paid to the keeper of the prison in which he shall be so imprisoned the sum in the warrant of commitment mentioned, together with the amount of the costs, charges, and expenses (if any) therein also mentioned, and the said keeper shall receive the same, and shall thereupon discharge such person, if he be in his custody for no other matter.

29. In all cases of summary proceedings before a justice or justices of the peace out of sessions upon any information or complaint as aforesaid, it shall be lawful for one justice to receive such information or complaint, and to grant a summons

If information be dismissed, costs may be recovered by distress upon prosecutor, etc. (f) Form 25, p. 1105.

After appeal against conviction or order justice may issue warrants of distress for execution of the same.

Costs of appeal, how recovered.

(g) Form 49, p. 1115.

On payment of penalty etc., distress not to be levied, or the party, if imprisoned for non-payment, shall be discharged.

Cf. 42 & 43 Vict. c. 49, s. 43 (viii.), *post*, p. 1050.

In cases of summary proceedings one justice may issue

summons or warrant, etc., and after conviction or order may issue warrant of distress, etc.

or warrant thereon, and to issue his summons or warrant to compel the attendance of any witnesses, and to do all other necessary acts and matters preliminary to the hearing, even in cases where by the statute in that behalf such information or complaint must be heard and determined by two or more justices; and after the case shall have been so heard and determined one justice may issue all warrants of distress or commitment thereon; and it shall not be necessary that the justice who so acts before or after such hearing shall be the justice or one of the justices by whom the said case shall be heard and determined: Provided always, that in all cases where by statute it is or shall be required that any such information or complaint shall be heard and determined by two or more justices, or that a conviction or order shall be made by two or more justices, such justices must be present and acting together during the whole of the hearing and determination of the case.

Regulations as to the payment of clerks' fees.

30. The fees to which any clerk of the peace shall be entitled shall be ascertained, appointed, and regulated in manner following; (that is to say) the justices of the peace at their quarter sessions for the several counties, ridings, divisions of counties, and liberties throughout England and Wales, and the council or other governing body of every borough in England and Wales, shall, from time to time as they shall see fit respectively, make tables of the fees which in their opinion should be paid to the clerks of the peace within their several jurisdictions, and which said tables respectively, being signed by the chairman of every such court of quarter sessions, or by the mayor or other head officer of any such borough respectively, shall be laid before her majesty's principal secretary of state; and it shall be lawful for such secretary of state, if he thinks fit, to alter such table or tables of fees, and to subscribe a certificate or declaration that such fees are proper to be demanded and received by the several clerks of the peace throughout England and Wales; and such secretary of state shall cause copies of such table or set of tables of fees to be transmitted to the several clerks of the peace throughout England and Wales; and if after such copy shall be received by such clerks or clerk he or they shall demand or receive any other or greater fee or gratuity for any business or act transacted or done by him as such clerk than such as is set down in such table or set of tables, he shall forfeit for every such demand or receipt the sum of twenty pounds, to be recovered by action of debt in any of the superior courts of law at Westminster, by any person who will sue for the same: Provided always, that until such table or set of tables shall be framed and confirmed and

distributed as aforesaid it shall be lawful for such clerk or clerks to demand and receive such fees as they are now by any rule or regulation of a court of quarter sessions or otherwise authorized to demand and receive.

31. In every warrant of distress to be issued as aforesaid the constable or other person to whom the same shall be directed shall be thereby ordered to pay the amount of the sum to be levied thereunder unto the clerk of the division in which the justice or justices issuing such warrant shall usually act; and if any person convicted of any penalty, or ordered by a justice or justices of the peace to pay any sum of money, shall pay the same to any constable or other person, such constable or other person shall forthwith pay the same to such clerk; and if any person committed to prison upon any conviction or order as aforesaid for nonpayment of any penalty, or of any sum thereby ordered to be paid, shall desire to pay the same and costs before the expiration of the time for which he shall be so ordered to be imprisoned by the warrant for his commitment, he shall pay the same to the gaoler or keeper of the prison in which he shall be so imprisoned, and such gaoler or keeper shall forthwith pay the same to the said clerk; and all sums so received by the said clerk shall forthwith be paid by him to the party or parties to whom the same respectively are to be paid, according to the directions of the statute on which the information or complaint in that behalf shall have been framed; and if such statute shall contain no such directions for the payment thereof to any person or persons, then such clerk shall pay the same to the treasurer of the county, riding, division, liberty, city, borough, or place for which such justice or justices shall have acted, and for which such treasurer shall give him a receipt without stamp; and every such clerk, and every such gaoler or keeper of a prison, shall keep a true and exact account of all such monies received by him, of whom and when received, and to whom and when paid, and shall once in every month render a fair copy of every such account unto the justices who shall be assembled at the petty sessions for the division in which such justice or justices aforesaid shall usually act, to be holden on or next after the first day of every month, under the penalty of forty shillings, to be recovered by distress in manner aforesaid; and the said clerk shall send or deliver every return so made by him as aforesaid to the clerk of the peace for the county, riding, division, liberty, city, borough, or place within which such division shall be situate, at such times as the court of quarter sessions for the same shall order in the behalf.

Regulations as to whom penalties, etc., to be paid.

But as to *quarter-sessions* boroughs, see *ante*, p. 204.

Clerks to keep accounts of all monies received, etc. in the form in Schedule to this Act, and render the same to the justices at sessions.

33. Any one of the magistrates appointed or hereafter to be Metropolitan police

magistrates and stipendiary magistrates in other places may act alone.

Nothing to affect powers, etc., contained in 10 Geo. 4, c. 44, 2 & 3 Vict. c. 47, 2 & 3 Vict. c. 71, and 3 & 4 Vict. c. 84.

The Lord Mayor, or any Alderman of London, may act alone.

Nothing to affect powers, etc., contained in 2 & 3 Vict. c. xciv.

To what this Act shall not extend.

Cf. 42 & 43 Vict. c. 49, s. 54, *post*, p. 1055.

appointed to act at any of the police courts of the metropolis, and sitting at a police court within the metropolitan police district, and every stipendiary magistrate appointed or to be appointed for any other city, town, liberty, borough, or place, and sitting at a police court or other place appointed in that behalf, shall have full power to do alone whatsoever is authorized by this act to be done by any one or more justice or justices of the peace; and the several forms hereinafter mentioned may be varied, so far as it may be necessary to render them applicable to the police courts aforesaid, or to the court or other place of sitting of such stipendiary magistrate; and nothing in this act contained shall alter or affect in any manner whatsoever any of the powers, provisions, or enactments contained in an act passed in the tenth year of the reign of his late Majesty King George the Fourth, intituled An act for improving the police in and near the metropolis, or in an act passed in the third year of the reign of her present Majesty, intituled An act for further improving the police in and near the metropolis, or in an act passed in the same year of the reign of her present Majesty, intituled An act for regulating the police courts in the metropolis, or in an act passed in the fourth year of the reign of her present Majesty, intituled An act for better defining the powers of justices within the metropolitan police district.

34. It shall be lawful for the lord mayor of the city of London, or for any alderman of the said city, for the time being, sitting at the Mansion-house or Guildhall justice-rooms in the said city to do alone any act, at either of the said justice-rooms, which by any law now in force, or by any law not containing an express enactment to the contrary hereafter to be made, is or shall be directed to be done by more than one justice; and that nothing in this act contained shall alter or affect in any manner whatsoever any of the powers, provisions, or enactments contained in an act passed in the third year of the reign of her present Majesty, intituled An act for regulating the police in the city of London.

35. Nothing in this act shall extend or be construed to extend to any warrant or order for the removal of any poor person who is or shall become chargeable to any parish, township, or place; nor to any complaints or orders made with respect to lunatics, or the expenses incurred for the lodging, maintenance, medicine, clothing, or care of any lunatic or insane person; nor shall any thing in this act extend or be construed to extend to any complaints, orders, or warrants in matters of bastardy made against the putative father of any bastard child, save and except such of the provisions aforesaid

as relate to the backing of warrants for compelling the appearance of such putative father, or warrants of distress, or to the levying of sums ordered to be paid, or to the imprisonment of a defendant for non-payment of the same.

37. The town of Berwick-upon-Tweed shall be deemed to be within England for all the purposes of this act; but that nothing in this act shall extend or be construed to extend to Scotland or Ireland, or to the Isles of Man, Jersey, Guernsey, Alderney, or Sark, save and except the several provisions respecting the backing of warrants contained in an act of parliament passed in this present session, intituled An act to facilitate the performance of the duties of justices of sessions within England and Wales with respect to persons charged with indictable offences, and incorporated into this act, as aforesaid.

Act to extend
to Berwick-
upon-Tweed,
but not to
Scotland,
Ireland, etc.,
except as to
backing of
warrants
under 11 & 12
Vict. c. 42.

See too 35 & 36
Vict. c. 26, and
cf. 42 & 43
Vict. c. 49,
s. 33, *post*,
p. 1044.

Interpretation
of terms.

Justices on
application
of a party
aggrieved to
state a case
for the opinion
of Superior
Court.

* *Sed vide*,
r. 18, p. 1088.

Security and
notice to be
given by the
appellant.

20 & 21 VICT. C. 43.

An Act to improve the Administration of the Law so far as respects summary Proceedings before Justices of the Peace.
[17th August, 1857.]

1. In the interpretation and for the purposes of this act, the following words shall have the meaning hereinafter assigned to them; that is to say,

“Superior Courts of Law” shall for England mean the supreme courts of law at Westminster, and for Ireland the supreme courts of law at Dublin:

“Court of Queen’s Bench” shall mean for England the court of queen’s bench at Westminster, and for Ireland the court of queen’s bench at Dublin.

2. After the hearing and determination by a justice or justices of the peace of any information or complaint which he or they have power to determine in a summary way, by any law now in force or hereafter to be made, either party to the proceeding before the said justice or justices may, if dissatisfied with the said determination as being erroneous in point of law, apply in writing within *[three] days after the same to the said justice or justices, to state and sign a case setting forth the facts and the grounds of such determination, for the opinion thereon of one of the superior courts of law to be named by the party applying: and such party, hereinafter called “the appellant,” shall, within three days after receiving such case, transmit the same to the court named in his application, first giving notice in writing of such appeal, with a copy of the case so stated and signed, to the other party to the proceeding in which the determination was given, hereinafter called “the respondent.”

3. The appellant, at the time of making such application, and before a case shall be stated and delivered to him by the justice or justices, shall in every instance enter into a recognizance, before such justice or justices, or any one or more of them, or any other justice exercising the same jurisdiction, with or without surety or sureties, and in such sum as to the justice or justices shall seem meet, conditioned to prosecute without delay such appeal, and to submit to the judgment of the superior court, and pay such costs as may be awarded by the same; and the appellant shall at the same time, and before he shall be entitled to have the case delivered to him, pay to the clerk to the said justice or justices his fee for and in respect of the case and recognizances and any other fee to which such clerk shall be entitled, which fees, except such as are

already provided for by law, shall be according to the schedule to this act annexed marked (A), until the same shall be ascertained, appointed and regulated in the manner prescribed by the statute* eleventh and twelfth Victoria, chapter forty-three section thirty; and the appellant, if then in custody, shall be liberated upon the recognizance being further conditioned for his appearance before the same justice or justices, or, if that is impracticable, before some other justice or justices exercising the same jurisdiction who shall be then sitting, within ten days after the judgment of the superior court shall have been given, to abide such judgment, unless the determination appealed against be reversed.

4. If the justice or justices be of opinion that the application is merely frivolous, but not otherwise, he or they may refuse to state a case, and shall, on the request of the appellant, sign and deliver to him a certificate of such refusal; provided, that the justice or justices shall not refuse to state a case where application for that purpose is made to them by or under the direction of her Majesty's attorney-general for England or Ireland, as the case may be.

5. Where the justice or justices shall refuse to state a case as aforesaid, it shall be lawful for the appellant to apply to the court of queen's bench upon an affidavit of the facts for a rule calling upon such justice or justices, and also upon the respondent, to show cause why such case should not be stated; and the said court may make the same absolute or discharge it, with or without payment of costs, as to the court shall seem meet, and the justice or justices, upon being served with such rule absolute, shall state a case accordingly, upon the appellant entering into such recognizance as is hereinbefore provided.

6. The court to which a case is transmitted under this act shall hear and determine the question or questions of law arising thereon, and shall thereupon reverse, affirm, or amend the determination in respect of which the case has been stated, or remit the matter to the justice or justices, with the opinion of the court thereon, or may make such other order in relation to the matter, and may make such orders as to costs as to the court may seem fit; and all such orders shall be final and conclusive on all parties: Provided always, that no justice or justices of the peace who shall state and deliver a case in pursuance of this act shall be liable to any costs in respect or by reason of such appeal against his or their determination.

7. The court for the opinion of which a case is stated shall have power, if they think fit, to cause the case to be sent back for amendment, and thereupon the same shall be amended:

P. 1021.

**Ante*, p. 1014;
but see now
40 & 41 Vict.
c. 43, s. 8.

Justices may
refuse a case
where they
think the
application
frivolous.

Where the
justices
refuse the
Court of
Queen's Bench
may by rule
order a case
to be stated.

Superior Court
to determine
the questions
on the case.

Its decisions
to be final.

Case may be
sent back for
amendment.

Powers of
Superior
Court may be
exercised by
a judge at
chambers.

After the
decision of
Superior
Court, justices
may issue
warrants.

Certiorari
not to be
required for
proceedings
under this
Act.

Superior
Courts may
make rules for
proceedings.

"Justices"
to include a
stipendiary
magistrate.

Recognizances
how to be
enforced.

accordingly, and judgment shall be delivered after it shall have been amended.

8. The authority and jurisdiction hereby vested in a superior court for the opinion of which a case is stated under this act shall and may (subject to any rules and orders of such court in relation thereto) be exercised by a judge of such court sitting in chambers. * * *

9. After the decision of the superior court in relation to any case stated for their opinion under this act, the justice or justices in relation to whose determination the case has been stated, or any other justice or justices of the peace exercising the same jurisdiction, shall have the same authority to enforce any conviction or order, which may have been affirmed, amended, or made by such superior court, as the justice or justices who originally decided the case would have had to enforce his or their determination if the same had not been appealed against; and no action or proceeding whatsoever shall be commenced or had against the justice or justices for enforcing such conviction or order, by reason of any defect in the same respectively.

10. No writ of certiorari or other writ shall be required for the removal of any conviction, order, or other determination in relation to which a case is stated under this act, or otherwise, for obtaining the judgment or determination of the superior court on such case under this act.

11. The superior courts of law may from time to time, and as often as they shall see occasion, make and alter rules and orders to regulate the practice and proceedings in reference to the cases hereinbefore mentioned.

12. The words "justice or justices" in this act shall include a magistrate of the police courts of the metropolis and any stipendiary magistrate.

13. In all cases where the conditions, or any of them, in the said recognizance mentioned, shall not have been complied with, the justice or justices who shall have taken the same, or any other justice or justices, shall certify upon the back of the recognizance in what respect the conditions thereof have not been observed, and transmit the same to the clerk of the peace of the county, riding, division, liberty, city, borough, or place within which such recognizance shall have been taken, to be proceeded upon in like manner as other recognizances forfeited at quarter sessions may now by law be enforced, and such certificate shall be deemed sufficient *prima facie* evidence of the said recognizance having been forfeited: Provided, that where any such recognizances shall have been taken in England before a magistrate of the police courts of the metropolis, or

by any stipendiary magistrate, all sums of money in which any person or persons shall be therein bound may, if the said magistrate shall think fit, be levied, upon such recognizance being forfeited, and on nonpayment thereof, together with the costs of the proceedings, to enforce such payment, in the same manner as a police magistrate of the metropolis is now empowered to recover any penalty, forfeiture, or sum of money, by section forty-five of an act passed in the second and third years of the reign of her present Majesty, intituled "An Act for Regulating the Police Courts in the Metropolis," and that all and every the provisions and enactments contained in the said section forty-five shall extend to and be applicable to this act, in as ample a manner as if they had been herein re-enacted and made part of the same.

14. Any person who shall appeal under the provisions of this act against any determination of a justice or justices of the peace from which he is by law entitled to appeal to the quarter sessions shall be taken to have abandoned such last-mentioned right of appeal, finally and conclusively, and to all intents and purposes.

15. This act shall not extend to Scotland.

2 & 3 Vict.
c. 71, s. 45
[repealed].

Appellants
under this
Act not
allowed to
appeal to
quarter
sessions.

Extent of Act.

SCHEDULE (A.).

Fees to be taken by Clerks to Justices.

For drawing case and copy, where the case does not exceed	s.	d.
five folios of ninety words each	10	0
Where the case exceeds five folios, then for every additional		
folio	1	0
For the recognizance to be taken in pursuance of the Act .	5	0
For every enlargement or renewal thereof	2	6
For certificate of refusal of case	2	0

30 & 31 VICT. C. 35.

(SELECTED SECTIONS.)

An Act to remove some Defects in the Administration of the Criminal Law. [20th June, 1867.]

Accused person to be asked by justice if he desire to call witnesses.

P. 972.

Their depositions to be taken and returned to court of trial if accused person call any.

Provisions of 11 & 12 Vict. c. 42, extended to this Act.

Power to take deposition of person

3. In all cases where any person shall appear or be brought before any justice or justices of the peace, charged with any indictable offence, whether committed within this realm or upon the high seas or upon land beyond the sea, and whether such person appear voluntarily upon summons, or has been apprehended with or without warrant, or be in custody for the same or any other offence, such justice or justices, before he or they shall commit such accused person for trial or admit him to bail, shall, immediately after obeying the directions of **11 & 12 Vict. c. 42, s. 18**, demand and require of the accused person whether he desires to call any witness; and if the accused person shall, in answer to such demand, call or desire to call any witness or witnesses, such justice or justices shall, in the presence of such accused person, take the statement on oath or affirmation, both examination and cross-examination of those who shall be so called as witnesses by such accused person, and who shall know anything relating to the facts and circumstances of the case or anything tending to prove the innocence of such accused person, and shall put the same into writing; and such depositions of such witnesses shall be read over to and signed respectively by the witnesses who shall have been so examined, and shall be signed also by the justice or justices taking the same, and transmitted in due course of law with the depositions, and such witnesses, not being witnesses merely to the character of the accused, as shall in the opinion of the justice or justices give evidence in any way material to the case or tending to prove the innocence of the accused person, shall be bound by recognizance to appear and give evidence at the said trial; and afterwards upon the trial of such accused person, all the laws now in force relating to the depositions of witnesses for the prosecution shall extend and be applicable to the depositions of witnesses hereby directed to be taken.

4. All the provisions of the said Act **11 & 12 Vict. c. 42**, relating to the summoning and enforcing the attendance and committal of witnesses, and binding them by recognizance and committal in default, and for giving the accused person copies of the examinations, and giving jurisdiction to certain persons to act alone, shall be read and shall have operation as part of this Act.

6. Whenever it shall be made to appear to the satisfaction of any justice of the peace that any person dangerously ill,

and in the opinion of some registered medical practitioner not likely to recover from such illness, is able and willing to give material information relating to any indictable offence, or relating to any person accused of any such offence, and it shall not be practicable for any justice or justices of the peace to take an examination or deposition in accordance with the provisions of the said Act of the person so being ill, it shall be lawful for the said justice to take in writing the statement on oath or affirmation of such person so being ill, and such justice shall thereupon subscribe the same, and shall add thereto by way of caption a statement of his reason for taking the same, and of the day and place when and where the same was taken, and of the names of the persons (if any) present at the taking thereof, and, if the same shall relate to any indictable offence for which any accused person is already committed or bailed to appear for trial, shall transmit the same with the said addition to the proper officer of the court for trial at which such accused person shall have been so committed or bailed; and in all other cases he shall transmit the same to the clerk of the peace of the county, division, city, or borough in which he shall have taken the same, who is hereby required to preserve the same, and file it of record; and if afterwards, upon the trial of any offender or offence to which the same may relate, the person who made the same statement shall be proved to be dead, or if it shall be proved that there is no reasonable probability that such person will ever be able to travel or to give evidence, it shall be lawful to read such statement in evidence, either for or against the accused, without further proof thereof, if the same purports to be signed by the justice by or before whom it purports to be taken, and provided it be proved to the satisfaction of the court that reasonable notice of the intention to take such statement has been served upon the person (whether prosecutor or accused) against whom it is proposed to be read in evidence, and that such person, or his counsel or attorney, had or might have had, if he had chosen to be present, full opportunity of cross-examining the deceased person who made the same.

7. Whenever a prisoner in actual custody shall have served or shall have received notice of an intention to take such statement as hereinbefore mentioned, the judge or justice of the peace by whom the prisoner was committed, or the visiting justices of the prison in which he is confined, may, by an order in writing, direct the gaoler having the custody of the prisoner to convey him to the place mentioned in the said notice for the purpose of being present at the taking of the statement; and such gaoler shall convey the prisoner accordingly.

dangerously ill, and not likely to recover, and to make same evidence in certain events, after death of such person.

Provision for the prisoner being present at taking of statement.

SUMMARY JURISDICTION ACT, 1879.

[42 & 43 VICT. C. 49.]

ARRANGEMENT OF SECTIONS.

Section.

1. Short title.
2. Application of Act,
3. Commencement of Act.

PART I.

Court of Summary Jurisdiction.

4. Mitigation of punishment by court.
5. Scale of imprisonment for non-payment of money.
6. Sum recoverable by summary order to be recoverable as a civil debt.
7. Payment by instalments of or security taken for payment of money.
8. Provision as to costs in the case of small fines.
9. Enforcing of recognizances by court of summary jurisdiction.
10. Summary trial of children for indictable offences, unless objected to by parent or guardian.
11. Summary trial with consent of young persons (juvenile offenders).
12. Summary trial with consent of adult.
13. Summary conviction on plea of guilty of adult.
14. Restriction on summary dealing with adult charged with indictable offence.
15. Restriction on punishment of child for summary offence.
16. Power of court to discharge accused without punishment (repealed).
17. Right to claim trial by jury in case of offences otherwise triable summarily.
18. Imprisonment in cases of cumulative sentences not to exceed six months.
19. Appeal from summary conviction to general or quarter sessions.
20. Court of summary jurisdiction to sit at a petty sessional or occasional court-house, etc.
21. Special provisions as to warrants of commitment for non-payment of sums of money, and as to warrants of distress.

Supplemental Provisions.

22. Register of court of summary jurisdiction.
23. Regulations as to securities taken in pursuance of Act.
24. Power of court of summary jurisdiction to remand for indictable offences.
25. Procedure before court of summary jurisdiction in case of sureties to keep the peace.
26. Power of petty sessional court with respect to varying order for sureties.
27. Regulations as to indictable offences dealt with summarily.

Section.

- 28. Cost of prosecution of indictable offences dealt with summarily.
- 29. Power of the Lord Chancellor to make rules.
- 30. Power to provide petty sessional court-house.

PART II.

Amendment of Procedure.

- 31. Procedure on appeal to general or quarter sessions.
- 32. Application of provisions respecting appeals to quarter sessions to appeals under prior Acts.
- 33. Appeal from court of summary jurisdiction by special case.
- 34. Summary orders.
- 35. Recovery of civil debts in court of summary jurisdiction.
- 36. Summons of witness when out of the jurisdiction of a court of summary jurisdiction.
- 37. Summons or warrant not avoided by death of justice, etc.
- 38. Bail of person arrested without a warrant.
- 39. Provisions as to proceedings, etc.
- 40. Case from quarter sessions without certiorari.
- 41. Proof by declaration of service of process, handwriting, etc.
- 42. Recognizances taken out of court.
- 43. Procedure on the execution of distress warrants.
- 44. Return by order of court of property taken from prisoner.
- 45. Local jurisdiction of court under this Act.
- 46. General provisions as to local jurisdiction of courts of summary jurisdiction.

PART III.

DEFINITIONS, SAVINGS, AND REPEAL OF ACTS.

Special Definitions.

- 47. Application of Act to sums leviable by distress or payable under order.
- 48. As to clerk of court of summary jurisdiction.
- 49. Special definitions for purposes of the Act.

General Definitions.

- 50. General definitions applicable to this and future Acts.

Application of Acts.

- 51. Application of summary jurisdiction Acts to future Acts.

Savings, and Construction.

- 52. Saving for army, navy, marine, and militia Acts.
- 53. Application of summary jurisdiction Acts to post office, inland revenue, and customs.
- 54. Application and construction of Act.

Repeal.

- 55. Repeal of Acts.
Schedules.

42 & 43 VICT. c. 49.

An Act to amend the Law relating to the Summary Jurisdiction of Magistrates.

[11th August, 1879.]

Short title. 1. This act may be cited for all purposes as "The Summary Jurisdiction Act, 1879."

Application of Act. 2. This act shall not extend to Scotland or Ireland.

PART I.

Court of Summary Jurisdiction.

Mitigation of punishment by court. 4. Subject as in this act mentioned, and notwithstanding any enactment to the contrary, where a court of summary jurisdiction has authority under this act, or under any other act, whether past or future to impose imprisonment or to impose a fine for an offence punishable on summary conviction, that court may, in the case of imprisonment, impose the same without hard labour, and reduce the prescribed period thereof, or do either of such acts; and in the case of a fine, if it be imposed as in respect of a first offence, may reduce the prescribed amount thereof.

But see ss. 52, 54, *post*, p. 1054.

And where in the case either of imprisonment or a fine there is prescribed a requirement for the offender to enter into his recognizance and to find sureties for keeping the peace, and observing some other condition, or to do any of such things, the court may dispense with any such requirement or any part thereof.

And where a court of summary jurisdiction has authority under an act of parliament other than this act, whether past or future, to impose imprisonment for an offence punishable on summary conviction, and has not authority to impose a fine for that offence, that court when adjudicating on such offence may, notwithstanding, if the court think that the justice of the case will be better met by a fine than by imprisonment, impose a fine not exceeding twenty-five pounds, and not being of such an amount as will subject the offender under the provisions of this act, in default of payment of the fine, to any greater term of imprisonment than that to which he is liable under the act authorising the said imprisonment.

Scale of imprisonment for non-payment of money.

5. The period of imprisonment imposed by a court of summary jurisdiction under this act, or under any other act, whether past or future, in respect of the non-payment of any sum of money adjudged to be paid by a conviction, or in respect of the default of a sufficient distress to satisfy any such sum, shall,

notwithstanding any enactment to the contrary in any past act, be such period as in the opinion of the court will satisfy the justice of the case, but shall not exceed in any case the maximum fixed by the following scale ; that is to say,

Where the amount of the sum or sums of money adjudged to be paid by a conviction, as ascertained by the conviction	The said period shall not exceed
Does not exceed ten shillings	Seven days.
Exceeds ten shillings but does not exceed one pound	Fourteen days.
Exceeds one pound but does not exceed five pounds	One month.
Exceeds five pounds but does not exceed twenty pounds	Two months.
Exceeds twenty pounds	Three months.

And such imprisonment shall be without hard labour, except where hard labour is authorised by the act on which the conviction is founded, in which case the imprisonment may, if the court thinks the justice of the case requires it, be with hard labour, so that the term of hard labour awarded do not exceed the term authorised by the said act.

6. Where under any act, whether past or future, a sum of money claimed to be due is recoverable on complaint to a court of summary jurisdiction, and not on information, such sum shall be deemed to be a civil debt, and if recovered before a court of summary jurisdiction shall be recovered in the manner in which a sum declared by this act to be a civil debt recoverable summarily is recoverable under this act, and not otherwise ; and the payment of any costs ordered to be paid by the complainant or defendant in the case of any such complaint shall be enforced in like manner as such civil debt, and not otherwise.

7. A court of summary jurisdiction by whose conviction or order any sum is adjudged to be paid, may do all or any of the following things ; namely,—

- (1) Allow time for the payment of the said sum ; and
- (2) Direct payment to be made of the said sum by instalments ; and
- (3) Direct that the person liable to pay the said sum shall be at liberty to give to the satisfaction of that court, or of such other court of summary jurisdiction, or such person as may be specified by that court, security with or without a surety or sureties for the payment of the said sum or of any instalment thereof, and such security may be given and enforced in manner provided by this act.

Sum recoverable by summary order to be recovered as a civil debt.

Payment by instalments of or security taken for payment of money.

Where a sum is directed to be paid by instalments and default is made in the payment of any one instalment, the same proceedings may be taken as if default had been made in payment of all the instalments then remaining unpaid.

A court of summary jurisdiction directing the payment of a sum or of an instalment of a sum may direct such payment to be made at such time or times, and in such place or places, and to such person or persons, as may be specified by the court; and every person to whom any such sum or instalment is paid, where not the clerk of the court of summary jurisdiction, shall as soon as may be account for and pay over the same to that clerk.

Provision as to costs in the case of small fines.

8. Where a fine adjudged by a conviction by a court of summary jurisdiction to be paid does not exceed five shillings, then, except so far as the court may think fit to expressly order otherwise, an order shall not be made for payment by the defendant to the informant of any costs; and the court shall, except so far as they think fit to expressly order otherwise, direct all fees payable or paid by the informant to be remitted or repaid to him; the court may also order the fine or any part thereof to be paid to the informant in or towards the payment of his costs.

Enforcing of recognizances by court of summary jurisdiction.

9.—(1) Where a recognizance is conditioned for the appearance of a person before a court of summary jurisdiction, or for his doing some other matter or thing to be done in, to, or before a court of summary jurisdiction, or in a proceeding in a court of summary jurisdiction, such court, if the said recognizance appears to the court to be forfeited, may declare the recognizance to be forfeited, and enforce payment of the sum due under such recognizance in the same manner as if the sum were a fine adjudged by such court to be paid which the statute provides no means of enforcing, and were ascertained by a conviction:

Provided that at any time before the sale of goods under a warrant of distress for the said sum, the said court of summary jurisdiction, or any other court of summary jurisdiction for the same county, borough, or place, may cancel or mitigate the forfeiture, upon the person liable applying, and giving security to the satisfaction of the court for the future performance of the condition of the recognizance, and paying or giving security for payment of the costs incurred in respect of the forfeiture, or upon such other conditions as the court may think just.

(2) Where a recognizance conditioned to keep the peace or to be of good behaviour, or not to do or commit some act or thing, has been entered into by any person as principal or surety before a court of summary jurisdiction, that court or any other court of summary jurisdiction acting for the same

county, borough, or place, upon proof of the conviction of the person bound as principal by such recognizance of any offence which is in law a breach of the condition of the same, may by conviction adjudge such recognizance to be forfeited, and adjudge the persons bound thereby, whether as principal or sureties, or any of such persons, to pay the sums for which they are respectively bound.

(3) Except where a person seeking to put into force a recognizance to keep the peace or to be of good behaviour, by notice in writing requires such recognizance to be transmitted to a court of general or quarter sessions, the recognizances to which this section applies shall be dealt with in manner in this section mentioned, and, notwithstanding any enactment to the contrary, shall not be transmitted, nor shall the forfeiture thereof be certified, to general or quarter sessions.

(4) All sums paid in respect of a recognizance declared or adjudged by a court of summary jurisdiction in pursuance of this section to be forfeited shall be paid to the clerk of such court, and shall be paid and applied by him in the manner in which fines imposed by such court, in respect of which fines no special appropriation is made, are payable and applicable.

10.—(1) Where a child is charged before a court of summary jurisdiction with any indictable offence other than homicide, the court if they think it expedient so to do, and if the parent or guardian of the child so charged, when informed by the court of his right to have the child tried by a jury, does not object to the child being dealt with summarily, may deal summarily with the offence, and inflict the same description of punishment as might have been inflicted had the case been tried on indictment.

Summary trial of children for indictable offences, unless objected to by parent or guardian.

Provided that—

- (a) A sentence of penal servitude shall not be passed, but imprisonment shall be substituted therefor; and
- (b) [Where imprisonment is awarded, the term shall not in any case exceed one month] and
- (c) Where a fine is awarded, the amount shall not in any case exceed forty shillings; and
- (d) When the child is a male the court may, either in addition to or instead of any other punishment, adjudge the child to be, as soon as practicable, privately whipped with not more than six strokes of a birch rod by a constable, in the presence of an inspector or other officer of police of higher rank than a constable, and also in the presence, if he desires to be present, of the parent or guardian of the child.

And see now 8 Edw. 7, c. 67, s. 102, *ante*, p. 142.

(2) For the purpose of a proceeding under this section, the court of summary jurisdiction, at any time during the hearing of the case at which they become satisfied by the evidence that it is expedient to deal with the case summarily, shall cause the charge to be reduced into writing and read to the parent or guardian of the child, and then address a question to such parent or guardian to the following effect: "Do you desire the child to be tried by a jury, and object to the case being dealt with summarily?" with a statement, if the court think such statement desirable for the information of such parent or guardian, of the meaning of the case being dealt with summarily, and of the assizes or sessions (as the case may be) at which the child will be tried if tried by a jury.

But see now
8 Edw. 7, c. 67,
s. 98, *ante*,
p. 121.

(3) Where the parent or guardian of a child is not present when the child is charged with an indictable offence before a court of summary jurisdiction, the court may, if they think it just so to do, remand the child for the purpose of causing notice to be served on such parent or guardian, with a view so far as is practicable of securing his attendance at the hearing of the charge, or the court may, if they think it expedient so to do, deal with the case summarily.

(4) This section shall not prejudice the right of a court of summary jurisdiction to send a child to a reformatory or industrial school.

(5) This section shall not render punishable for an offence any child who is not, in the opinion of the court before whom he is charged, above the age of seven years and of sufficient capacity to commit crime.

Summary
trial with
consent of
young persons
(juvenile
offenders),
as amended by
62 & 63 Vict.
c. 22, s. 2,
post, p. 1076.

11.—(1) Where a young person is charged before a court of summary jurisdiction with any indictable offence (other than homicide), the court, if they think it expedient so to do, having regard to the character and antecedents of the person charged, the nature of the offence, and all the circumstances of the case, and if the young person charged with the offence, when informed by the court of his right to be tried by a jury, consents to be dealt with summarily, may deal summarily with the offence, and in their discretion adjudge such person, if found guilty of the offence, either to pay a fine not exceeding ten pounds, or to be imprisoned, with or without hard labour, for any term not exceeding three months: *[and if the young person is a male, and, in the opinion of the court, under the age of fourteen years, the court, if they think it expedient so to do, may, either in substitution for or in addition to any other punishment under this act, adjudge such young person to be, as soon as practicable, privately whipped with not more than twelve strokes of a birch rod by a constable, in*

Repealed as
from April 1st,
1909, by
8 Edw. 7,
c. 67.

the presence of an inspector or other officer of police of higher rank than a constable, and also in the presence, if he desires to be present, of the parent or guardian of such young person.]

(2) For the purpose of a proceeding under this section, the court, at any time during the hearing of the case at which they become satisfied by the evidence that it is expedient to deal with the case summarily, shall cause the charge to be reduced into writing and read to the young person charged, and then address a question to him to the following effect: "Do you desire to be tried by a jury, or do you consent to the case being dealt with summarily?" with a statement, if the court think such statement desirable for the information of the young person to whom the question is addressed, of the meaning of the case being dealt with summarily, and of the assizes or sessions (as the case may be) at which he will be tried if tried by a jury.

(3) This section shall not prejudice the right of a court of summary jurisdiction to send a young person to a reformatory or an industrial school.

12. Where a person who is an adult is charged before a court of summary jurisdiction with any indictable offence specified in the second column of the first schedule to this act, the court, if they think it expedient so to do, having regard to the character and antecedents of the person charged, the nature of the offence, and all the circumstances of the case, and if the person charged with the offence, when informed by the court of his right to be tried by a jury, consents to be dealt with summarily, may deal summarily with the offence, and adjudge such person, if found guilty of the offence, to be imprisoned, with or without hard labour, for any term not exceeding three months, or to pay a fine not exceeding twenty pounds.

Summary trial
with consent
of adult.

For the purpose of a proceeding under this section, the court at any time during the hearing of the case at which they become satisfied by the evidence that it is expedient to deal with the case summarily, shall cause the charge to be reduced into writing and read to the person charged, and then address a question to him to the following effect: "Do you desire to be tried by a jury, or do you consent to the case being dealt with summarily?" with a statement, if the court think such statement desirable for the information of the person to whom the question is addressed, of the meaning of the case being dealt with summarily, and of the assizes or sessions (as the case may be) at which he will be tried if tried by a jury.

13.—(1) Where a person who is an adult is charged before a court of summary jurisdiction with an indictable offence which is specified in the first column of the first schedule to this act, and is not comprised in the second column of that schedule,

Summary
conviction
on plea of
guilty of
adult.

Summary
conviction on
plea of guilty
of adult
—*contd.*

and the court at any time during the hearing of the case becomes satisfied that the evidence is sufficient to put the person charged on his trial for the said offence, and further are satisfied (either after such a remand as is provided by this act or otherwise) that the case is one which, having regard to the character and antecedents of the person charged, the nature of the offence, and all the circumstances of the case may properly be dealt with summarily, and may be adequately punished by virtue of the powers of this act, then the court shall cause the charge to be reduced into writing and read to the person charged, and shall then ask him whether he is guilty or not of the charge; and if such person says that he is guilty, the court shall thereupon cause a plea of guilty to be entered, and adjudge him to be imprisoned, with or without hard labour, for any term not exceeding six months.

(2) The court, before asking, in pursuance of this section, the person charged whether he is guilty or not, shall explain to him that he is not obliged to plead or answer, and that if he pleads guilty he will be dealt with summarily, and that if he does not plead or answer, or pleads not guilty, he will be dealt with in the usual course; with a statement, if the court thinks such statement desirable for the information of the person to whom the question is addressed, of the meaning of the case being dealt with summarily or in the usual course, and of the assizes or sessions (as the case may be) at which such person will be tried if tried by a jury. The court shall further state to such person to the effect that he is not obliged to say anything unless he desires to do so, but that whatever he says will be taken down in writing, and may be given in evidence against him upon his trial, and shall give him clearly to understand that he has nothing to hope from any promise of favour, and nothing to fear from any threat which may have been held out to him to induce him to make any admission or confession of his guilt, but that whatever he then says may be given in evidence against him upon his trial, notwithstanding such promise or threat.

(3) If the prisoner does not plead guilty, whatever he says in answer shall be taken down in writing and read over to him, and signed by a justice constituting or forming part of the court, and kept with the depositions of the witnesses, and transmitted with them in manner required by law, and afterwards upon the trial of the prisoner may, if necessary, be given in evidence against him without further proof thereof, unless it is proved that the justice purporting to have signed the same did not in fact sign the same.

14. Where a person who is an adult is charged before a

Restriction
on summary

court of summary jurisdiction with any indictable offence specified in the first schedule to this act, and it appears to the court that the offence is one which, owing to a previous conviction on indictment of the person so charged, is punishable by law with penal servitude, the court shall not deal with the case summarily in pursuance of this act.

dealing with adult charged with indictable offence.

15. A child on summary conviction for an offence punishable on summary conviction under this act, or under any other act, whether past or future, shall not be [*imprisoned for a longer period than one month nor*] fined a larger sum than forty shillings. [*Clause in brackets repealed as from April 1st, 1909, by 8 Edw. 7, c. 67.*]

Restriction on punishment of child for summary offence.

16. [*Repealed by Probation of Offenders Act, 1907.*]

17.—(1) A person when charged before a court of summary jurisdiction with an offence, in respect of the commission of which an offender is liable on summary conviction to be imprisoned for a term exceeding three months, and which is not an assault, may, on appearing before the court and before the charge is gone into but not afterwards, claim to be tried by a jury, and thereupon the court of summary jurisdiction shall deal with the case in all respects as if the accused were charged with an indictable offence and not with an offence punishable on summary conviction, and the offence shall as respects the person so charged be deemed to be an indictable offence, and, if the person so charged is committed for trial, or bailed to appear for trial, shall be prosecuted accordingly, [*and the expenses of the prosecution shall be payable as in cases of felony*].

Right to claim trial by jury in case of offences otherwise triable summarily.

(2) A court of summary jurisdiction, before the charge is gone into in respect of an offence to which this section applies, for the purpose of informing the defendant of his right to be tried by a jury in pursuance of this section, shall address him to the following effect: "You are charged with an offence in respect of the commission of which you are entitled, if you desire it, instead of being dealt with summarily, to be tried by a jury; do you desire to be tried by a jury?" with a statement, if the court think such statement desirable for the information of the person to whom the question is addressed, of the meaning of being dealt with summarily, and of the assizes or sessions (as the case may be) at which such person will be tried if tried by a jury.

Repealed as from 1 Jan. 1909, 7 Edw. 7, c. 15, post, p. 1078.

(3) This section shall not apply to the case of a child unless the parent or guardian of the child is present; but the court shall ascertain whether the parent or guardian of the child is present, and if he is, shall address the above question to such parent or guardian, and the claim under this section may be made by such parent or guardian.

Imprisonment in cases of cumulative sentences not to exceed six months.

Appeal from summary conviction to general or quarter sessions.

Court of summary jurisdiction to sit at a petty sessional or occasional court-house, etc.

Cf. *post*, p. 1068.

18. A court of summary jurisdiction shall not, by cumulative sentences of imprisonment (other than for default of finding sureties) to take effect in succession in respect of several assaults committed on the same occasion, impose on any person imprisonment for the whole exceeding six months.

19. Where, in pursuance of any act, whether past or future, any person is adjudged by a conviction or order of a court of summary jurisdiction to be imprisoned without the option of a fine, either as a punishment for an offence, or, save as hereinafter mentioned, for failing to do or to abstain from doing any act or thing required to be done or left undone, and such person is not otherwise authorised to appeal to a court of general or quarter sessions, and did not plead guilty or admit the truth of the information or complaint, he may, notwithstanding anything in the said act, appeal to a court of general or quarter sessions against such conviction or order :

Provided that this section shall not apply where the imprisonment is adjudged for failure to comply with an order for the payment of money, for the finding of sureties, for the entering into any recognizance, or for the giving of any security.

20.—(1) A case arising under this act, or under any other act, whether past or future, shall not be heard, tried, determined or adjudged by a court of summary jurisdiction, except when sitting in open court.

(2) Open court means a petty sessional court-house or an occasional court-house. * * * * *

(4) An occasional court-house means such police station or other place as is appointed (as hereinafter provided) to be used as an occasional court-house.

(5) The justices of a petty sessional division of a county shall from time to time, at a sessions of which notice has been given to every justice of such division, appoint police stations or other places other than the petty sessional court-house, to be used as occasional court-houses, at which cases may be heard, tried, determined and adjudged, and they may from time to time at such a sessions as aforesaid vary any police station or place so appointed, and shall cause public notice to be given in such manner as they think expedient of every police station or place for the time being appointed to be used as an occasional court-house. * * * * *

(7) Where a case arising under this act, or under any other act, whether past or future, is heard, tried, determined and adjudged by a court of summary jurisdiction sitting in an occasional court-house, the period of imprisonment imposed by the conviction or order of such court shall not exceed fourteen

days, and the sum adjudged to be paid by the conviction or order of such court shall not exceed twenty shillings; and a justice of the peace when sitting alone in a petty sessional court-house shall not have power to impose any greater term of imprisonment or adjudge any larger sum to be paid than is above mentioned.

Cf. post,
p. 1053.

(8) An indictable offence dealt with summarily in pursuance of this act shall not be heard, tried, determined or adjudged except by a petty sessional court sitting on some day appointed for hearing indictable offences, of which public notice has been given in such manner as to the justices of the petty sessional division seem expedient, or at some adjournment of such court.

(9) Any case arising under this act, other than such indictable offence as aforesaid, and any case arising under any future act which is triable by a court of summary jurisdiction, shall, unless it is otherwise prescribed, be heard, tried, determined and adjudged by a court of summary jurisdiction consisting of two or more justices.

(10) The lord mayor of the City of London, and any alderman of the said city, and any metropolitan or borough police magistrate or other stipendiary magistrate, when sitting in a court-house or place at which he is authorised by law to do alone any act authorised to be done by more than one justice of the peace, shall, for the purposes of this act, be deemed to be a court of summary jurisdiction consisting of two or more justices and also to be a court of summary jurisdiction sitting in a petty sessional court-house, and is in this act included in the expression "petty sessional court."

(11) A court of summary jurisdiction, when not a petty sessional court, may, without prejudice to any other power of adjournment which the court may possess, adjourn the hearing of any case to the next practicable sitting of a petty sessional court in the same manner in all respects as a justice is authorised to adjourn the hearing of a case under section sixteen of the Summary Jurisdiction Act, 1848.

11 & 12 Vict.
c. 43, s. 16,
ante, p. 1008.

21.—(1) A court of summary jurisdiction to whom application is made either to issue a warrant of distress for any sum adjudged to be paid by a conviction or order, or to issue a warrant for committing a person to prison for non-payment of a sum of money adjudged to be paid by a conviction, or in the case of a sum not a civil debt by an order, or for default of sufficient distress to satisfy any such sum, may, if the court deem it expedient so to do, postpone the issue of such warrant until such time and on such conditions, if any, as to the court may seem just.

Special provisions as to warrants of commitment for non-payment of sums of money, and as to warrants of distress.

(2) The wearing apparel and bedding of a person and his family, and, to the value of five pounds, the tools and implements of his trade, shall not be taken under a distress issued by a court of summary jurisdiction.

(3) Where a person is adjudged by the conviction of a court of summary jurisdiction, or in the case of a sum not a civil debt by an order of such court, to pay any sum of money and on default of payment of such a sum a warrant of distress is authorised to be issued, and it appears to the court of summary jurisdiction to whom application is made to issue such warrant that such person has no goods whereon to levy the distress, or that in the event of a warrant of distress being issued his goods will be insufficient to satisfy the money payable by him, or that the levy of the distress will be more injurious to him or his family than imprisonment, such court, instead of issuing such warrant of distress, may, if it think fit, order the said person on non-payment of the said sum to be imprisoned for any period not exceeding the period for which he is liable under such conviction or order to be imprisoned in default of sufficient distress.

(4) Where on application to a court of summary jurisdiction to issue a warrant for committing a person to prison for non-payment of a sum adjudged to be paid by a conviction of any court of summary jurisdiction, or in the case of a sum not a civil debt by an order of such court, or for default of sufficient distress to satisfy any such sum, it appears to the court to whom the application is made that either by payment of part of the said sum, whether in the shape of instalments or otherwise, or by the net proceeds of the distress, the amount of the sum so adjudged has been reduced to such an extent that the unsatisfied balance, if it had constituted the original amount adjudged to be paid by the conviction or order, would have subjected the defendant to a maximum term of imprisonment less than the term of imprisonment to which he is liable under such conviction or order, the court shall, by its warrant of commitment, revoke the term of imprisonment, and order the defendant to be imprisoned for a term not exceeding such less maximum term, instead of for the term originally mentioned in the conviction or order.

Supplemental Provisions.

Register of
court of
summary
jurisdiction.

22.—(1) The clerk of every court of summary jurisdiction shall keep a register of the minutes or memorandum of all the convictions and orders of such court, and of such other proceedings as are directed by a rule under this act to be registered, and shall keep the same with such particulars and in

such form as may be from time to time directed by a rule under this act.

(2) Such register, and also any extract from such register certified by the clerk of the court keeping the same to be a true extract, shall be *prima facie* evidence of the matters entered therein for the purpose of informing a court of summary jurisdiction acting for the same county borough or place as the court whose convictions, orders and proceedings are entered in the register; but nothing in this section shall dispense with the legal proof of a previous conviction for an offence when required to be proved against a person charged with another offence.

(3) The register kept by any particular clerk, in pursuance of this section, may be distinguished by the name of his petty sessional division, or by such name or description as may be directed by a rule under this act.

(4) The entries relating to each minute memorandum or proceeding shall be either entered or signed by the justice or one of the justices constituting the court by or before whom the conviction or order or proceeding referred to in the minute or memorandum was made or had, except that when a court of summary jurisdiction is not a petty sessional court a return signed as aforesaid, and made and entered in the register in manner provided by a rule under this act, shall suffice.

(5) Every sum paid to the clerk of a court of summary jurisdiction in accordance with the summary jurisdiction acts, and the appropriation of such sum, shall be entered and authenticated in such manner as may be from time to time directed by a rule under this act.

(6) Every such register shall be open for inspection, without fee or reward, by any justice of the peace, or by any person authorized in that behalf by a justice of the peace or by a secretary of state.

23.—(1) A person shall give security under this act, whether as principal or surety, either by the deposit of money with the clerk of the court, or by an oral or written acknowledgment of the undertaking or condition by which and of the sum for which he is bound, in such manner and form as may be for the time being directed by any rule made in pursuance of this act, and evidence of such security may be provided by entry thereof in the register under this act of proceedings of a court of summary jurisdiction or otherwise as may be directed by such rule.

(2) Any sum which may become due in pursuance of a security under this act from a surety shall be recoverable summarily, in manner directed by this act with respect to a

Regulations as to securities taken in pursuance of Act.

civil debt, on complaint by a constable or by the clerk of the court directing such security to be given, or by some other person authorized for the purpose by that court or any other court of summary jurisdiction for the same county, borough or place.

(3) A court of summary jurisdiction may enforce payment of any sum due by a principal in pursuance of a security under this act which appears to such court to be forfeited, in like manner as if that sum were adjudged by a court of summary jurisdiction to be paid as a fine which the statute provides no mode of enforcing, if the security was given for a sum adjudged by a conviction, and in any other case in like manner as if it were a sum adjudged by a court of summary jurisdiction to be paid as a civil debt; provided that before a warrant of distress for the sum is issued, such notice of the forfeiture shall be served on the said principal, and in such manner as may be directed for the time being by rules under this act, and subject thereto by the court authorizing the security, or by any court to whom application is made for the issue of the warrant.

(4) Any sum paid by a surety on behalf of his principal in respect of a security under this act, together with all costs, charges and expenses incurred by such surety in respect of that security, shall be deemed a civil debt due to him from the principal, and may be recovered before a court of summary jurisdiction in manner directed by this act with respect to the recovery of a civil debt which is recoverable summarily.

(5) Where security is given under this act for payment of a sum of money, the payment of such sum shall be enforced by means of such security in substitution for other means of enforcing such payment.

Power of court of summary jurisdiction to remand for indictable offences.

24.—(1) Where a person is charged before a court of summary jurisdiction with an indictable offence, with which a court of summary jurisdiction has or may have under the circumstances in this act mentioned power to deal summarily, the court before whom such person is charged, without prejudice to any other power that it may possess,—

(a) may, for the purpose of ascertaining whether it is expedient to deal with the case summarily, either before or during the hearing of the case, from time to time adjourn the case and remand the person accused; and

(b) if such court is not at the time of the charge a petty sessional court, and the court think the case proper to be dealt with summarily, may adjourn the case and remand the person accused until the next practicable sitting of a petty sessional court.

(2) A person may be remanded under this section in like manner in all respects as a person accused of an indictable offence may be remanded under section twenty-one of the act of the session of the eleventh and twelfth years of the reign of her present majesty, chapter forty-two, intituled "An Act to Facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to Persons charged with Indictable Offences," with this addition, that where he is remanded to the next practicable sitting of a petty sessional court he may be remanded for more than eight days.

25. The power of a court of summary jurisdiction, upon complaint of any person, to adjudge a person to enter into a recognizance and find sureties to keep the peace or to be of good behaviour towards such first-mentioned person, shall be exercised by an order upon complaint, and the summary jurisdiction acts shall apply accordingly, and the complainant and defendant and witnesses may be called and examined and cross-examined, and the complainant and defendant shall be subject to costs, as in the case of any other complaint.

11 & 12 Vict.
c. 42, s. 21,
ante, p. 974.

Procedure
before court
of summary
jurisdiction in
case of sureties
to keep the
peace.

See **Form**,
p. 1101.

The court may order the defendant, in default of compliance with the order, to be imprisoned for a period not exceeding, if the court be a petty sessional court, six months, and if the court be a court of summary jurisdiction other than a petty sessional court, fourteen days.

26. Where a person has been committed to prison by a court of summary jurisdiction for default in finding sureties any petty sessional court for the same county, borough or place may, on application made to them in manner directed by a rule made in pursuance of this act, by him or by some one acting on his behalf, inquire into the case of the person so committed, and if upon new evidence produced to such court or proof of a change of circumstances the court think, having regard to all the circumstances of the case, that it is just so to do, they may reduce the amount for which it is proposed the sureties or surety should be bound, or dispense with the sureties or surety, or otherwise deal with the case as the court may think just.

Power of petty
sessional court
with respect
to varying
order for
sureties.

See r. 17,
p. 1088, and
Form 4,
p. 1093.

27. Where an indictable offence is under the circumstances in this act mentioned authorized to be dealt with summarily,—

Regulations
as to indic-
table offences
dealt with
summarily.

(1) The procedure shall, until the court assume the power to deal with such offence summarily, be the same in all respects as if the offence were to be dealt with throughout as an indictable offence, but when and so soon as the court assume the power to deal with such offence

summarily, the procedure shall be the same from and after that period as if the offence were an offence punishable on summary conviction and not on indictment, and the provisions of the acts relating to offences punishable on summary conviction shall apply accordingly ; and

- (2) The evidence of any witness taken before the court assumed the said power need not be taken again, but every such witness shall, if the defendant so require it, be recalled for the purpose of cross-examination ; and
- (3) The conviction for any such offence shall be of the same effect as a conviction for the offence on indictment, and the court may make the like order for the restitution of property as might have been made by the court before whom the person convicted would have been tried if he had been tried on indictment ; and
- (4) Where the court have assumed the power to deal with the case summarily, and dismiss the information, they shall, if required, deliver to the person charged a copy certified under their hands of the order of such dismissal, and such dismissal shall be of the same effect as an acquittal on a trial on indictment for the offence ; and
- (5) The conviction shall contain a statement either as to the plea of guilty of an adult, or in the case of a child as to the consent or otherwise of his parent or guardian, and in the case of any other person of the consent of such person, to be tried by a court of summary jurisdiction ; and
- (6) The order of dismissal shall be transmitted to and filed by the clerk of the peace in like manner as the conviction is required by the Summary Jurisdiction Act, 1848, to be transmitted and filed, and together with the order of dismissal or the conviction, as the case may be, there shall be transmitted to and filed by such clerk in each case the written charge, the depositions of the witnesses, and the statement, if any, of the accused.

11 & 12 Vict.
c. 43, s. 14,
ante, p. 1007.

Cost of prosecution of indictable offences dealt with summarily.

28. Where an indictable offence (the expenses of the prosecution of which would otherwise have been payable out of the local rate) is dealt with summarily in pursuance of this act by a court of summary jurisdiction, the expenses of the prosecution of such offence shall be payable in manner provided by this section.

Repealed as from 1 Jan., 1909, except so far as the section is applied by

The court dealing summarily with any such indictable offence may, if it seem fit, grant to any person who preferred the charge, or appeared to prosecute or give evidence, a certificate of the amount of the compensation which the court may deem reasonable for his expenses, trouble, and loss of time

therein, subject, nevertheless, to such regulations as may be from time to time made by a secretary of state with respect to the payment of costs in the case of indictable offences; and the amount named in the certificate may include the fees payable to the clerk of the court of summary jurisdiction, and the fees payable to the clerk of the peace for filing the conviction depositions and other documents required to be filed by him under this act, and such other expenses as are by law payable when incurred before a commitment for trial; and every certificate so granted shall have the effect of an order of court for the payment of the expenses of a prosecution for felony, made in pursuance of the act of the seventh year of king George the fourth, chapter sixty-four, intituled "An Act for Improving the Administration of Criminal Justice in England," and the acts amending the same, and the amount named in such certificate shall be paid in like manner as the expenses specified in such order would have been paid.

29.—(1) The lord high chancellor of Great Britain may from time to time make, and when made, rescind, alter and add to, rules in relation to the following matters, or any of them; that is to say,

- (a) The giving security under this act; and
- (b) The forms to be used under the Summary Jurisdiction Acts, or any of them, including the forms of any recognizance mentioned in this act, and
- (c) The costs and charges payable under distress warrants issued by a court of summary jurisdiction; and
- (d) Adapting to the provisions of this act and of the Summary Jurisdiction Act, 1848, the procedure before courts of summary jurisdiction under any act passed before the Summary Jurisdiction Act, 1848; and
- (e) Regulating the form of the account to be rendered by clerks of courts of summary jurisdiction of fines, fees and other sums received by them, and providing for the discontinuance of any existing account rendered unnecessary by the aforesaid account; and
- (f) Any other matter in relation to which rules are authorised or required to be made under or for the purpose of carrying into effect this Act.

(2) The lord chancellor may, in the exercise of the power given him by this section, annul, alter or add to any forms contained in the Summary Jurisdiction Act, 1848, or any forms relating to summary proceedings contained in any other act.

(3) Any rule purporting to be made in pursuance of this section shall be laid before both houses of parliament as soon

s. 1 of the Inebriates Act, 1899, or any other Act (8 Edw. 7, c. 15).

Form, p. 1127.

Power of the Lord Chancellor to make rules.

11 & 12 Vict. c. 43.

11 & 12 Vict. c. 43.

11 & 12 Vict. c. 43.

as may be after it is made, if parliament be then sitting, or if not then sitting, within one month after the commencement of the then next session of parliament, and shall be judicially noticed.

Power to
provide petty
sessional
court-house.

Cf. 47 & 48
Vict. c. 43,
s. 8, *post*,
p. 1064,
and 45 & 46
Vict. c. 50.
s. 160.

30. Where the justices in general or quarter sessions assembled or the council of any borough have authority to hire or otherwise provide a fit and proper place for holding petty sessions of the peace, such justices or council shall have power to provide a petty sessional court-house within the meaning of this Act, by the purchase or other acquisition of land, and the erection of a proper building thereon; and all enactments relating to the provision of such place and to the raising of the money for defraying the expense of the provision of such place shall apply accordingly.

PART II.

Amendment of Procedure.

Procedure on
appeal to
general or
quarter
sessions.

31. Where any person is authorised to appeal from the conviction or order of a court of summary jurisdiction to a court of general or quarter sessions, he may appeal to such court, subject to the conditions and regulations following:

- (1) The appeal shall be made to the prescribed court of general or quarter sessions, or if no court is prescribed, to the next practicable court of general or quarter sessions having jurisdiction in the county, borough or place for which the said court of summary jurisdiction acted, and holden not less than fifteen days after the day on which the decision was given upon which the conviction or order was founded; and
- (2) The appellant shall, within the prescribed time, or if no time is prescribed within seven days after the day on which the said decision of the court was given, give notice of appeal by serving on the other party and on the clerk of the said court of summary jurisdiction notice in writing of his intention to appeal, and of the general grounds of such appeal; and
- (3) The appellant shall, within the prescribed time, or if no time is prescribed, within three days after the day on which he gave notice of appeal, enter into a recognizance before a court of summary jurisdiction, with or without a surety or sureties, as that court may direct, conditioned to appear at the said sessions and to try such appeal, and to abide the judgment of the court of appeal thereon, and to pay such costs as may be awarded by the court of appeal,

or the appellant may, if the court of summary jurisdiction before whom the appellant appears to enter into a recognizance think it expedient, instead of entering into a recognizance, give such other security, by deposit of money with the clerk of the court of summary jurisdiction or otherwise, as that court deem sufficient ; and

(4) Where the appellant is in custody, the court of summary jurisdiction before whom the appellant appears to enter into a recognizance may, if the court think fit, on the appellant entering into such recognizance or giving such other security as aforesaid, release him from custody ; and

(5) The court of appeal may adjourn the hearing of the appeal, and upon the hearing thereof may confirm, reverse, or modify the decision of the court of summary jurisdiction, or remit the matter, with the opinion of the court of appeal thereon, to a court of summary jurisdiction acting for the same county, borough or place as the court by whom the conviction or order appealed against was made, or may make such other order in the matter as the court of appeal may think just, and may by such order exercise any power which the court of summary jurisdiction might have exercised, and such order shall have the same effect, and may be enforced in the same manner, as if it had been made by the court of summary jurisdiction. The court of appeal may also make such order as to costs to be paid by either party as the court may think just ; and

(6) Whenever a decision is not confirmed by the court of appeal, the clerk of the peace shall send to the clerk of the court of summary jurisdiction from whose decision the appeal was made, for entry in his register, and also indorse on the conviction or order appealed against, a memorandum of the decision of the court of appeal, and whenever any copy or certificate of such conviction or order is made, a copy of such memorandum shall be added thereto, and shall be sufficient evidence of the said decision in every case where such copy or certificate would be sufficient evidence of such conviction or order ; and

(7) Every notice in writing required by this section to be given by an appellant shall be in writing signed by him, or by his agent on his behalf, and may be transmitted as a registered letter by the post in the ordinary way, and shall be deemed to have been served at the time when it would be delivered in the ordinary course of the post.

32. Where any past act, so far as unrepealed, prescribes that any appeal from the conviction or order of a court of summary

Application
of provisions
respecting

appeals to quarter sessions to appeals under prior Acts.

Appeal from court of summary jurisdiction by special case.
Cf. *ante*, p. 1018.

38 & 39 Vict.
c. 77.

Summary orders.

jurisdiction shall be made to the next court of general or quarter sessions, such appeal may be made to the next practicable court of general or quarter sessions having jurisdiction in the county, borough or place for which the court of summary jurisdiction acted, and held not less than fifteen days after the day on which the decision was given upon which the conviction or order appealed against was founded.

33.—(1) Any person aggrieved who desires to question a conviction, order, determination, or other proceeding of a court of summary jurisdiction, on the ground that it is erroneous in point of law, or is in excess of jurisdiction, may apply to the court to state a special case setting forth the facts of the case and the grounds on which the proceeding is questioned, and if the court decline to state the case, may apply to the high court of justice for an order requiring the case to be stated.

(2) The application shall be made and the case stated within such time and in such manner as may be from time to time directed by rules under this act, and the case shall be heard and determined in manner prescribed by rules of court made in pursuance of the Supreme Court of Judicature Act, 1875, and the acts amending the same; and, subject as aforesaid, the act of the session of the twentieth and twenty-first years of the reign of her present majesty, chapter forty-three, intituled “An Act to improve the administration of the law so far as respects summary proceedings before justices of the peace,” shall, so far as it is applicable, apply to any special case stated under this section, as if it were stated under that act:

Provided that nothing in this section shall prejudice the statement of any special case under that act.

34.—(1) Where a power is given by any future act to a court of summary jurisdiction of requiring any person to do or abstain from doing any act or thing other than the payment of money, or of requiring any act or thing to be done or left undone other than the payment of money, and no mode is prescribed of enforcing such requisition, the court may exercise such power by an order or orders, and may annex to any such order any conditions as to time or mode of action which the court may think just, and may suspend or rescind any such order on such undertaking being given or condition being performed as the court may think just, and generally may make such arrangement for carrying into effect such power as to the court seems meet.

(2) A person making default in complying with an order of a court of summary jurisdiction in relation to any matter arising under any future act other than the payment of money, shall be punished in the prescribed manner, or if no punish-

ment is prescribed, may in the discretion of the court be ordered to pay a sum (to be enforced as a civil debt recoverable summarily under this act) not exceeding one pound for every day during which he is in default, or to be imprisoned until he has remedied his default :

Provided that a person shall not, for non-compliance with the requisition of a court of summary jurisdiction, whether made by one or more orders, to do or abstain from doing any act or thing, be liable under this section to imprisonment for a period or periods amounting in the aggregate to more than two months, or to the payment of any sums exceeding in the aggregate twenty pounds.

35. Any sum declared by this act, or by any future act, to be a civil debt, which is recoverable summarily, or in respect of the recovery of which jurisdiction is given by such act to a court of summary jurisdiction, shall be deemed to be a sum for payment of which a court of summary jurisdiction has authority by law to make an order on complaint in pursuance of the Summary Jurisdiction Acts : Provided as follows :

Recovery of
civil debts
in court of
summary
jurisdiction.

(1) A warrant shall not be issued for apprehending any person for failing to appear to answer any such complaint ; and

(2) An order made by a court of summary jurisdiction for the payment of any such civil debt as aforesaid or of any instalment thereof, or for the payment of any costs in the matter of any such complaint, whether ordered to be paid by the complainant or defendant, shall not, in default of distress or otherwise, be enforced by imprisonment, unless it be proved to the satisfaction of such court or of any other court of summary jurisdiction for the same county, borough or place, that the person making default in payment of such civil debt, instalment or costs, either has or has had since the date of the order, the means to pay the sum in respect of which he has made default, and has refused or neglected, or refuses or neglects, to pay the same, and in any such case the court shall have the same power of imprisonment as a county court would for the time being have under the Debtors Act, 1869, for default of payment if such debt had been recovered in that court, but shall not have any greater power.

32 & 33 Vict.
c. 62.

Proof of the means of the person making default may be given in such manner as the court to whom application is made for the commitment to prison think just, and for the purposes of such proof the person making default, and any witnesses may be summoned and examined on oath according to the rules for the time being in force under this act in relation

38 & 39 Vict.
c. 90.

Summons of
witness when
out of the
jurisdiction
of a court
of summary
jurisdiction.

11 & 12 Vict.
c. 43.

Summons or
warrant not
avoided by
death of
justice, etc.,
11 & 12 Vict.
c. 43.

Bail of person
arrested with-
out a warrant.
Cf. 47 & 48
Vict. c. 43,
s. 9; *post*,
p. 1065.

Provisions as
to pro-
ceedings, etc.

to the summoning and examination of witnesses, or if no such rules are in force, to the rules for the like purpose made in pursuance of the Employers and Workmen Act, 1875.

36. Where a court of summary jurisdiction for any county, borough or place would have power to issue a summons to a witness, if such witness were within the said county, borough or place, and such witness is believed to be within some other county, borough or place in England, such court may issue a summons to such witness in like manner as if such witness were within the jurisdiction of such court; and any court of summary jurisdiction for the county, borough or place in which the witness may be, or be believed to be, may, on proof on oath, or such solemn declaration as provided by this act, of the signature to the summons, indorse the summons, and the witness, on service of the summons so indorsed and on payment or tender of a reasonable amount for his expenses, shall obey the summons and in default shall be liable to be apprehended or otherwise proceeded against, either in the county, borough or place in which the summons was issued, or in that in which the witness may happen to be, in manner directed by the Summary Jurisdiction Act, 1848, as if such witness had been duly summoned by a court of summary jurisdiction for the county, borough or place in which such witness is apprehended or proceeded against.

37. A warrant or summons issued by a justice of the peace under the Summary Jurisdiction Act, 1848, or any other act, whether past or future, or otherwise, shall not be avoided by reason of the justice who signed the same dying or ceasing to hold office.

38. A person taken into custody for an offence without a warrant shall be brought before a court of summary jurisdiction as soon as practicable after he is so taken into custody, and if it is not or will not be practicable to bring him before a court of summary jurisdiction within twenty-four hours after he is so taken into custody, a superintendent or inspector of police, or other officer of police of equal or superior rank, or in charge of any police station, shall inquire into the case, and, except where the offence appears to such superintendent, inspector or officer, to be of a serious nature, shall discharge the prisoner, upon his entering into a recognizance, with or without sureties, for a reasonable amount, to appear before some court of summary jurisdiction at the day, time and place named in the recognizance.

39. The following enactments shall apply to proceedings before courts of summary jurisdiction; (that is to say,)

1. The description of any offence in the words of the act, or any order, byelaw, regulation, or other document creating the offence, or in similar words, shall be sufficient in law; and
2. Any exception, exemption, proviso, excuse, or qualification, whether it does or does not accompany in the same section the description of the offence in the act, order, byelaw, regulation or other document creating the offence, may be proved by the defendant, but need not be specified or negatived in the information or complaint, and, if so specified or negatived, no proof in relation to the matter so specified or negatived shall be required on the part of the informant or complainant; and
3. A warrant of commitment shall not be held void by reason of any defect therein, if it be therein alleged that the offender has been convicted or ordered to do or abstain from doing any act or thing required to be done or left undone, and there is a good and valid conviction or order to sustain the same; and
4. A warrant of distress shall not be deemed void by reason only of any defect therein, if it be therein alleged that a conviction or order has been made, and there is a good and valid conviction or order to sustain the same, and a person acting under a warrant of distress shall not be deemed a trespasser from the beginning by reason only of any defect in the warrant, or of any irregularity in the execution of the warrant, but this enactment shall not prejudice the right of any person to satisfaction for any special damage caused by any defect in or irregularity in the execution of a warrant of distress, so however that if amends are tendered before action brought, and if the action is brought are paid into court in the action, and the plaintiff does not recover more than the sum so tendered and paid into court, the plaintiff shall not be entitled to any costs incurred after such tender, and the defendant shall be entitled to costs, to be taxed as between solicitor and client; and
5. All forfeitures not pecuniary which are incurred in respect of an offence triable by a court of summary jurisdiction, or which may be enforced by a court of summary jurisdiction, may be sold or disposed of in such manner as the court having cognizance of the case or any other court of summary jurisdiction for the same county, borough or place may direct, and the proceeds of such sale shall be applied in the like manner as if the proceeds were a fine imposed under the act on which the proceeding for the forfeiture is founded.

Case from
quarter
sessions
without
certiorari.

Proof by
declaration
of service of
process,
handwriting,
etc.

Cf. r. 30, *post*,
p. 1090.

Recogni-
zances taken
out of court.

Procedure on
the execution

40. A writ of certiorari or other writ shall not be required for the removal of any conviction, order, or other determination, in relation to which a special case is stated by a court of general or quarter sessions for obtaining the judgment or determination of a superior court.

41. In a proceeding within the jurisdiction of a court of summary jurisdiction, without prejudice to any other mode of proof, service on a person of any summons, notice, process, or document required or authorized to be served, and the handwriting and seal of any justice of the peace or other officer or person on any warrant, summons, notice, process, or document, may be proved by a solemn declaration taken before a justice of the peace, or before a commissioner to administer oaths in the supreme court of judicature, or before a clerk of the peace or a registrar of a county court; and any declaration purporting to be so taken shall, until the contrary is shown, be sufficient proof of the statements contained therein, and shall be received in evidence in any court or legal proceeding, without proof of the signature or of the official character of the person or persons taking or signing the same; and the fee, if any, for taking such declaration shall be such sum, not exceeding one shilling, as may be directed by rules made in pursuance of this act, and any such fee shall be costs in the matter or proceeding to which it relates (*post*, p. 1090).

The declaration may be in the form provided by a rule under this act, and if any declaration made under this section is untrue in any material particular, the person wilfully making such false declaration shall be guilty of wilful and corrupt perjury.

42. When a court of summary jurisdiction has fixed, as respects any recognizance, the amount in which the principal and the sureties (if any) are to be bound, the recognizance, notwithstanding anything in this or any other act, need not be entered into before such court, but may, subject to any rules made in pursuance of this act, be entered into by the parties before any other court of summary jurisdiction or before any clerk of a court of summary jurisdiction, or before a superintendent or inspector of police or other officer of police of equal or superior rank or in charge of any police station, or where any of the parties is in prison, before the governor or other keeper of such prison; and thereupon all the consequences of law shall ensue, and the provisions of this act with respect to recognizances taken before a court of summary jurisdiction shall apply, as if the recognizance had been entered into before the said court as heretofore by law required.

43. The following regulations shall be enacted with respect

to warrants of distress issued by a court of summary jurisdiction : of distress warrants.

- (1.) A warrant of distress shall be executed by or under the direction of a constable ; and
- (2.) Save so far as the person against whom the distress is levied otherwise consents in writing, the distress shall be sold by public auction, and five clear days at the least shall intervene between the making of the distress and the sale, and where written consent is so given as aforesaid the sale may be made in accordance with such consent ; and
- (3.) Subject as aforesaid, the distress shall be sold within the period fixed by the warrant, and if no period is so fixed then within the period of fourteen days from the date of the making of the distress, unless the sum for which the warrant was issued, and also the charges of taking and keeping the said distress, are sooner paid ; and
- (4.) Subject to any directions to the contrary given by the warrant of distress, where the distress is levied on household goods the goods shall not, except with the consent in writing of the person against whom the distress is levied, be removed from the house until the day of sale, but so much of the goods shall be impounded as are in the opinion of the person executing the warrant sufficient to satisfy the distress, by affixing to the articles impounded a conspicuous mark ; and any person removing any goods so marked, or defacing or removing the said mark, shall on summary conviction be liable to a fine not exceeding five pounds ; and
- (5.) Where a person charged with the execution of a warrant of distress wilfully retains from the produce of any goods sold to satisfy the distress, or otherwise exacts, any greater costs and charges than those to which he is for the time being entitled by law, or makes any improper charge, he shall be liable on summary conviction to a fine not exceeding five pounds ; and
- (6.) A written account of the costs and charges incurred in respect of the execution of any warrant of distress shall be sent by the constable charged with the execution of the warrant as soon as practicable to the clerk of the court of summary jurisdiction issuing the warrant ; and it shall be lawful for the person upon whose goods the distress was levied, within one month after the levy of the distress, to inspect such account without fee or reward at any reasonable time to be appointed by the court, and to take a copy of such account ; and

- (7.) A constable charged with the execution of a warrant of distress shall cause the distress to be sold, and may deduct out of the amount realised by such sale all costs and charges actually incurred in effecting such sale, and shall render to the owner the overplus, if any, after retaining the amount of the sum for which the warrant was issued and the proper costs and charges of the execution of the warrant ; and
- (8.) Where a person pays or tenders to the constable charged with the execution of a warrant of distress the sum mentioned in such warrant, or produces the receipt for the same of the clerk of the court of summary jurisdiction issuing the warrant, and also pays the amount of the costs and charges of such distress up to the time of such payment or tender, the constable shall not execute the warrant.

Return by order of court of property taken from prisoner.

44. Where any property has been taken from a person charged before a court of summary jurisdiction with any offence punishable either on indictment or on summary conviction, a report shall be made by the police to such court of summary jurisdiction of the fact of such property having been taken from the person charged and of the particulars of such property, and the court shall, if of opinion that the property or any portion thereof can be returned consistently with the interests of justice and with the safe custody of the person charged, direct such property, or any portion thereof, to be returned to the person charged or to such other person as he may direct.

Local jurisdiction of court under this Act.

45. Where a person is charged with an indictable offence mentioned in the first schedule to this act before a court of summary jurisdiction for any county, borough, or place and the court have jurisdiction to commit such person for trial in such county, borough or place, although the offence was not committed therein, such court shall also have jurisdiction to deal with the offence summarily in pursuance of this act.

General provisions as to local jurisdiction of courts of summary jurisdiction.

46. For the purposes of the trial of any offence punishable on summary conviction under this act or under any other act, whether past or future, the following provisions shall have effect—

(1.) Where the offence is committed in any harbour, river, arm of the sea, or other water, tidal or other, which runs between or forms the boundary of the jurisdiction of two or more courts of summary jurisdiction, such offence may be tried by any one of such courts.

(2.) Where the offence is committed on the boundary of the jurisdiction of two or more courts of summary jurisdiction,

or within the distance of five hundred yards of any such boundary, or is begun within the jurisdiction of one court and completed within the jurisdiction of another court of summary jurisdiction, such offence may be tried by any one of such courts.

(3.) Where the offence is committed on any person or in respect of any property in or upon any carriage, cart, or vehicle whatsoever employed in a journey, or on board any vessel whatsoever employed in a navigable river, lake, canal, or inland navigation, the person accused of such offence may be tried by any court of summary jurisdiction through whose jurisdiction such carriage, cart, vehicle, or vessel passed in the course of the journey or voyage during which the offence was committed; and where the side, bank, centre, or other part of the highway, road, river, lake, canal, or inland navigation along which the carriage, cart, vehicle, or vessel passed in the course of such journey or voyage is the boundary of the jurisdiction of two or more courts of summary jurisdiction, a person may be tried for such offence by any one of such courts.

(4.) Any offence which is authorised by this section to be tried by any court of summary jurisdiction may be dealt with, heard, tried, determined, adjudged, and punished as if the offence had been wholly committed within the jurisdiction of such court.

PART III.

DEFINITIONS, SAVINGS, AND REPEAL OF ACTS.

Special Definitions.

47. The provisions of this act with respect to a sum adjudged to be paid by an order shall apply, so far as circumstances admit, to a sum in respect of which a court of summary jurisdiction can issue a warrant of distress without an information or complaint under the Summary Jurisdiction Act, 1848, in like manner as if the said sum were a civil debt; and the provisions of this act with respect to the hearing, trying, determining and judging of a case by a court of summary jurisdiction when sitting in open court shall apply to the hearing, trying, determining, and adjudging by a court of summary jurisdiction of an application for the issue of any such warrant.

The provisions of this act with respect to the period of imprisonment to be imposed in respect of the non-payment of a sum of money adjudged to be paid by a conviction or in respect of the default of a sufficient distress to satisfy any such sum

Application
of Act to
sums leviable
by distress
or payable
under order.
11 & 12 Vict.
c. 43.

shall apply to the period of imprisonment to be imposed in respect of the non-payment of any sum of money adjudged to be paid by an order of a court of summary jurisdiction or in respect of the default of a sufficient distress to satisfy any such sum, where such sum is not a civil debt nor enforceable as a civil debt.

As to clerk
of court of
summary
jurisdiction.

40 & 41 Vict.
c. 43.

48. Anything required by this act to be done by, to, or before a clerk of a court of summary jurisdiction shall be done by, to, or before the salaried clerk to a petty sessional division under section five of the Justices Clerks Act, 1877, and where there is more than one such clerk, by either of such clerks or by such of those clerks as a court of summary jurisdiction for such division from time to time direct; and if any other person acts as the clerk to a court of summary jurisdiction acting in and for such division, such person, subject to any rules made under this act, shall be deemed for the purposes of this act to have acted as the deputy of such salaried clerk, and shall make a return to the said salaried clerk of all matters done by such court and of all matters which the clerk of the court is required to enter in a register or otherwise to record :

40 & 41 Vict.
c. 43.

Provided, that nothing in this section shall apply where the court of summary jurisdiction is a court to whose clerk section five of the Justices Clerks Act, 1877, does not apply : that is to say, the justices of a borough, or a metropolitan police court, or any stipendiary or other magistrate the salary of whose clerk is regulated under any act of parliament, other than the Justices Clerks Act, 1877, and the principal act therein mentioned.

40 & 41 Vict.
c. 43.

Special
definitions
for purposes
of the Act.

49. In this act, if not inconsistent with the context, the following expressions have the meanings hereinafter respectively assigned to them ; that is to say,

The expression "child" means a person who in the opinion of the court before whom he is brought is under the age of twelve years ; [from April 1st, 1909, the age has been *fourteen*, see 8 Edw. 7, c. 67, s. 128.]

The expression "young person" means a person who in the opinion of the court before whom he is brought is of the age of twelve years and under the age of sixteen years : [from April 1st, 1909, the age has been from *fourteen* to sixteen years, see 8 Edw. 7, c. 67, s. 128.]

The expression "adult" means a person who in the opinion of the court before whom he is brought is of the age of sixteen years or upwards :

The expression "person" includes a child, young person, and adult, and also includes a body corporate :

The expression "guardian," in relation to a child, includes

any person who, in the opinion of the court, having cognizance of any case in which a child is concerned, has for the time being the charge of or control over such child :

The expression "prescribed" means prescribed or provided by any act which relates to any offences, penalties, fines, costs, sums of money, orders, proceedings, or matters, to the punishment, recovery, making, or conduct of which the Summary Jurisdiction Acts expressly or impliedly apply or may be applied :

The expression "past act" means any act passed before the commencement of this act, exclusive of this act :

The expression "future act" means any act passed after the commencement of this act.

The expression "fine" includes any pecuniary penalty or pecuniary forfeiture or pecuniary compensation payable under a conviction :

The expression "county" includes any county, riding, division, parts, or liberty of a county having a separate court of quarter sessions :

The expression "borough" means a borough subject to the provisions of the Municipal Corporations Act, 1835, and the acts amending the same :

5 & 6 Will. 4,
c. 76

The expression "local rate" means as respects any county, borough, or place, any county rate, borough rate, or other local rate out of which the costs of the prosecution of any felony committed within such county, borough, or place are payable :

The expressions "sum adjudged to be paid by a conviction" and "sum adjudged to be paid by an order" respectively include any costs adjudged to be paid by the conviction or order, as the case may be, of which the amount is ascertained by such conviction or order.

50. *Repealed.* But see 52 & 53 Vict. c. 63, s. 13, *post*, p. 1068.

Application of Acts

51. The following regulations shall be made for the purpose of facilitating the application of the Summary Jurisdiction Acts to any future act ; that is to say,

- (1.) Where in any future act, any offence is directed or authorised to be prosecuted summarily or on summary conviction, or any fine is directed or authorised to be recovered summarily or on summary conviction, or any other words are used implying that such offence is to be prosecuted or fine is to be recovered in manner provided

Application
of Summary
Jurisdiction
Acts to
future Acts.

by the Summary Jurisdiction Acts, the Summary Jurisdiction Acts shall apply accordingly; and

- (2.) Where in any future act any sum of money is directed or authorised to be recovered before a court of summary jurisdiction, or on complaint made to a court of summary jurisdiction, or words are used (whether by authorising the sum to be recovered summarily or in a summary manner or otherwise) which imply that such sum of money is to be recovered before a court of summary jurisdiction, or in manner provided by the Jurisdiction Acts, the Summary Jurisdiction Acts shall apply accordingly; and
- (3.) Where in any future act a court of summary jurisdiction is authorised to order or require a person to do or abstain from doing any act or thing other than the payment of a sum of money; or where in pursuance of any such act any act or thing other than the payment of a sum of money is required or authorised by an order of a court of summary jurisdiction to be done, or is declared capable of being enforced summarily, or by summary order; or where in any such act any words are used implying that such act or thing is to be enforced in manner provided by the Summary Jurisdiction Acts, the Summary Jurisdiction Acts shall apply accordingly.

Savings, and Construction.

Saving for Army, Navy, Marine, and Militia Acts.

52. The provisions of this act which enable a court of summary jurisdiction, notwithstanding any enactment to the contrary, to impose imprisonment without hard labour, and reduce the prescribed period thereof, or do either of such acts, and in the case of a fine, if it be imposed as in respect of a first offence, to reduce the prescribed amount thereof, and in the case of imprisonment, to impose a fine in lieu of imprisonment, shall not apply to any proceedings taken under any act relating to any of her majesty's regular or auxiliary forces.

Application of Summary Jurisdiction Acts to Inland Revenue and Customs.
Cf. *Thomas v. Pritchard*, cited *ante*, pp. 405, 448.

53. [*Repealed.* 8 Edw. 7 c. 48, Sch.]
* * * * *

The Summary Jurisdiction Acts shall, notwithstanding any special provisions to the contrary contained in any of the statutes relating to her majesty's revenue under the control of the Commissioners of Inland Revenue or the Commissioners of Customs, apply to all information, complaints, and other proceedings before a court of summary jurisdiction under or by virtue of any of the said statutes :

Provided, that where the sum adjudged by conviction under or by virtue of any of the said statutes to be paid exceeds fifty

pounds, the period of imprisonment imposed by a court of summary jurisdiction in respect of the nonpayment of such sum, or in respect of the default of a sufficient distress to satisfy such sum, may exceed three months but shall not exceed six months.

54. This act shall apply to the levying of sums adjudged to be paid by an order in any matter of bastardy, or by an order which is enforceable as an order of affiliation, and to the imprisonment of a defendant for nonpayment of such sums, in like manner as if an order in any such matter or so enforceable were a conviction on information, and shall apply to the proof of the service of any summons, notice, process, or document in any matter of bastardy, and of any handwriting or seal in any such matter, and to an appeal from an order in any matter of bastardy.

Application
and construc-
tion of Act.

Nothing in this act shall authorise a court of summary jurisdiction to reduce the amount of a fine where the act prescribing such amount carries into effect a treaty convention or agreement with a foreign state, and such treaty convention or agreement stipulates for a fine of a minimum amount.

This act shall be construed as one with the Summary Jurisdiction Act, 1848, so far as is consistent with the tenour of such acts respectively, and save as aforesaid shall be subject to the exceptions specified in section thirty-five of the Summary Jurisdiction Act, 1848.

11 & 12 Vict.
c. 43.

11 & 12 Vict.
c. 43, s. 35.

Provided that the provisions contained in section thirty-three and thirty-four of the Summary Jurisdiction Act, 1848, as to the acts relating to the police in the metropolis and in the city of London, and relating to the powers of justices within the metropolitan police district, shall not apply to or restrict the operation of this act.

11 & 12 Vict.
c. 43, ss. 33, 34.
Ante, pp. 1015,
1016.

This act shall not apply to any information, complaint, or other summary proceeding laid, made, or instituted before the commencement of this act, or in respect of any offence committed, or any act done, or any cause which arose before the commencement of this act, and any such information, complaint, or other proceeding as aforesaid may be laid, made, instituted, and proceeded with in the same manner as if this act had not been passed.

Repeal.

55. Where any unrepealed act of parliament incorporates or refers to any provisions of any act hereby repealed, such unrepealed act shall be deemed to incorporate or refer to the corresponding provisions of this act.

Repeal of
Acts.

SCHEDULES.

FIRST SCHEDULE,

AS AMENDED BY SUMMARY JURISDICTION ACT, 1899

(62 & 63 VICT. c. 22, *post*, p. 1076),

AND THE CHILDREN ACT, 1908 (8 EDW. 7, c. 67).

Indictable Offences which can be dealt with summarily under these Acts.

FIRST COLUMN. Young Persons consenting and Adults pleading Guilty.	SECOND COLUMN. Adults consenting.
As to the Inebriates Act, 1898, see <i>ante</i>, p. 608. 1. Simple larceny. 1A. Obtaining or attempting to obtain by any false pretence from any person any chattel, money, or valuable security with intent to defraud against the provisions of the Larceny Act, 1861, section eighty-eight. 24 & 25 Vict. c. 96. * <i>Sic</i>. The offence of unlawfully and maliciously setting fire to any part of any wood, coppice or plantation of trees, or to any heath, gorse, furze, or fern, under section sixteen of the Malicious Damage Act, 1861. 24 & 25 Vict. c. 97. 2. Offences declared by any Act for the time being in force to be punishable as simple larceny.	1. Simple larceny, where the value of the whole of the property alleged to have been stolen does not in the opinion of the court before whom the charge is brought exceed forty shillings. 1A. Obtaining or attempting to obtain by any false pretence from any person any chattel, money, or valuable security with intent to defraud, where the amount of the money, or the value of the whole of the chattels, valuable securities or property alleged* to have been obtained by such false pretences does not in the opinion of the court before whom the charge is brought exceed forty shillings. The offence of unlawfully and maliciously setting fire to any part of any wood, coppice, or plantation of trees, or to any heath, gorse, furze or fern, under section sixteen of the Malicious Damage Act, 1861, when the damage done to the property which is the subject of the alleged offence does not in the opinion of the court before whom the charge is brought exceed in amount forty shillings. 2. Offences declared by any Act for the time being in force to be punishable as simple larceny, where the value of the whole of

FIRST COLUMN. Young Persons consenting and Adults pleading Guilty.	SECOND COLUMN. Adults consenting.
3. Larceny from or stealing from the person.	the property alleged to have been stolen, destroyed, injured, or otherwise dealt with by the offender does not in the opinion of the court before whom the charge is brought exceed forty shillings.
4. Larceny as a clerk or servant.	3. Larceny from or stealing from the person, where the value of the whole of the property alleged to have been stolen does not in the opinion of the court before whom the charge is brought exceed forty shillings.
5. Embezzlement by a clerk or servant.	4. Larceny as a clerk or servant, where the value of the whole of the property alleged to have been stolen does not in the opinion of the court before whom the charge is brought exceed forty shillings.
6. Receiving ' stolen goods, that is to say, committing any of the offences relating to property specified in the ninety-first and ninety - fifth sections of the Larceny Act, 1861 (being the Act of the session of the twenty-fourth and twenty-fifth years of the reign of her present Majesty, chapter ninety-six), or in either of such sections.	5. Embezzlement by a clerk or servant, where the value of the whole of the property alleged to have been embezzled does not in the opinion of the court before whom the charge is brought exceed forty shillings.
7. Aiding, abetting, counselling, or procuring the commission of simple larceny, or of an offence declared by any Act for the time	6. Receiving stolen goods, that is to say, committing any of the offences relating to property specified in the ninety-first and ninety-fifth sections of the Larceny Act, 1861 (being the Act of the session of the twenty-fourth and twenty-fifth years of the reign of her present Majesty, chapter ninety-six), or in either of such sections, where the value of the whole of the property alleged to have been received does not in the opinion of the court before whom the charge is brought exceed forty shillings.
	7. Aiding, abetting, counselling, or procuring the commission of simple larceny, or of an offence declared by any Act for the time

FIRST COLUMN. Young Persons consenting and Adults pleading Guilty.	SECOND COLUMN. Adults consenting.
being in force to be punishable as simple larceny, or of larceny or stealing from the person, or of larceny as a clerk or servant. 8. Attempt to commit simple larceny, or an offence declared by any Act for the time being in force to be punishable as simple larceny, or to commit larceny from or steal from the person, or to commit larceny as a clerk or servant.	being in force to be punishable as simple larceny, or of larceny or stealing from the person, or of larceny as a clerk or servant, where the value of the whole of the property which is the subject of the alleged offence does not in the opinion of the court before whom the charge is brought exceed forty shillings. 8. Attempt to commit simple larceny, or an offence declared by any Act for the time being in force to be punishable as simple larceny, or to commit larceny from or to steal from the person, or to commit larceny as a clerk or servant. 9. Committing an indecent assault upon a person, whether male or female, who in the opinion of the court is under the age of sixteen years.

But see now
62 & 63 Vict.
c. 22, s. 2.
post, p. 1076.

This Act shall apply to any of the following offences when alleged to have been committed by a *young person* in like manner as if such offence were included in the first column of the schedule; that is to say,

- (1.) To any offence in relation to railways and railway carriages mentioned in sections thirty-two and thirty-three of the Act of the session of the twenty-fourth and twenty-fifth years of the reign of her present Majesty, chapter one hundred, intituled "An Act to consolidate and amend the statute law of England and Ireland relating to offences against the person"; and
- (2.) To any offence relating to railways mentioned in section thirty-five of the Act of the session of the twenty-fourth and twenty-fifth years of the reign of her present Majesty, chapter ninety-seven, intituled "An Act to consolidate and amend the statute law of England and Ireland relating to malicious injuries to property;" and
- (3.) To any indictable offence, either under the post-office laws or prosecuted by her Majesty's postmaster-general; and for the purpose of this provision the expression "post-office laws" has the same meaning as it has in the Act of the session of the seventh year of the reign of King

William the Fourth and the first year of the reign of her present Majesty, chapter thirty-six, intituled "An Act for consolidating the laws relative to offences against the post-office of the United Kingdom, and for regulating the judicial administration of the post-office laws, and for explaining certain terms and expressions employed in those laws," and the Acts amending the same.

44 & 45 VICT. c. 24.

An Act to amend the law respecting the service of process of courts of summary jurisdiction in England and Scotland.

[18th July, 1881.]

Short title.

1. This act may be cited as the Summary Jurisdiction (Process) Act, 1881.

This act shall be deemed to be included in the expressions "Summary Jurisdiction Acts" and "Summary Jurisdiction (English) Acts."

Extent of Act.

2. This act shall not apply to Ireland.

Service of
process of
English court
in Scotland
and of Scotch
court in
England.

4. Subject to the provisions of this act, any process issued under the Summary Jurisdiction Acts may, if issued by a court of summary jurisdiction in England and endorsed by a court of summary jurisdiction in Scotland, or issued by a court of summary jurisdiction in Scotland and endorsed by a court of summary jurisdiction in England, be served and executed within the jurisdiction of the endorsing court in like manner as it may be served and executed within the jurisdiction of the issuing court, and that by an officer either of the issuing or of the endorsing court.

For the purposes of this act—

(1) Any process may be issued and endorsed under the hand of any such person as is declared by this act to be a court of summary jurisdiction, and may be endorsed upon proof alone of the handwriting of the person issuing it, and such proof may be either on oath or by such solemn declaration as is mentioned in section forty-one of the Summary Jurisdiction Act, 1879, or by any like declaration taken in Scotland before a sheriff, justice of the peace, or other magistrate having the authority of a justice of the peace. Such indorsement may be in the form contained in the schedule to this act annexed, or in a form to the like effect :

(2) Where any process requiring the appearance of a person to answer any information or complaint has been served in pursuance of this section, the court, before issuing a warrant for the apprehension of such person for failure so to appear, shall be satisfied on oath that there is sufficient *prima facie* evidence in support of such information or complaint :

(3) If the process is to procure the attendance of a witness, the court issuing the process shall be satisfied on oath of the probability that the evidence of such witness will be material, and that the witness will not appear voluntarily

42 & 43 Vict.
c. 49, s. 41,
ante, p. 1048.

without such process, and the witness shall not be subject to any liability for not obeying the process; unless a reasonable amount for his expenses has been paid or tendered to him :

- (4) This act shall not apply to any process requiring the appearance of a person to answer a complaint if issued by an English court of summary jurisdiction for the recovery of a sum of money which is a civil debt within the meaning of the Summary Jurisdiction Act, 1879, or if issued by a Scotch court in a case which falls within the definition of "civil jurisdiction" contained in the Summary Procedure Act, 1864.

5. Where a person is apprehended under any process executed in pursuance of this act, such person shall be forthwith taken to some place within the jurisdiction of the court issuing the process, and be there dealt with as if he had been there apprehended.

Provision as
to execution
of process.

A warrant of distress issued in England when endorsed in pursuance of this act shall be executed in Scotland as if it were a Scotch warrant of poinding and sale, and a Scotch warrant of poinding and sale when endorsed in pursuance of this act shall be executed in England as if it were an English warrant of distress, and the enactments relating to the said warrants respectively shall apply accordingly, except that any account of the costs and charges in connexion with the execution, or of the money levied thereby or otherwise relating to the execution, shall be made, and any money raised by the execution shall be dealt with in like manner as if the warrant had been executed within the jurisdiction of the court issuing the warrant.

6. A court of summary jurisdiction in England and a sheriff court in Scotland shall respectively have jurisdiction by order or decree to adjudge a person within the jurisdiction of the court to pay for the maintenance and education of a bastard child of which he is the putative father, and for the expenses incidental to the birth of such child, and for the funeral expenses of such child, notwithstanding that such person ordinarily resides, or the child has been born, or the mother of it ordinarily resides, where the court is English, in Scotland, or where the court is Scotch, in England, in like manner as the court has jurisdiction in any other case.

Provision as
to bastardy
proceedings
in England
and Scotland.

Any process issued in England or Scotland to enforce obedience to such order or decree may be endorsed and executed in Scotland and England respectively in manner provided by this act with respect to process of a court of summary jurisdiction.

Any bastardy order of a court of summary jurisdiction in

England may be registered in the books of a sheriff court in Scotland, and thereupon a warrant of arrestment may be issued in like manner as if such order were a decree of the said sheriff court.

Saving. 7. This act shall be in addition to and not in derogation of any power existing under any other act relating to the execution of any warrant or other process in England and Scotland respectively.

Definitions. 8. In this act, unless the context otherwise requires,—

The expression “process” includes any summons or warrant of citation to appear either to answer any information or complaint, or as a witness; also any warrant of commitment, any warrant of imprisonment, any warrant of distress, any warrant of poinding and sale, also any order or minute of a court of summary jurisdiction or copy of such order or minute, also an extract decree, and any other document or process, other than a warrant of arrestment, required for any purpose connected with a court of summary jurisdiction to be served or executed.

The expression “sheriff” shall include sheriff substitute.

The expression “court of summary jurisdiction” means any justice of the peace, also any officer or other magistrate having the authority in England or Scotland of a justice of the peace, also in Scotland the sheriff.

The expression “officer of a court of summary jurisdiction” means the constable, officer, or person to whom any process issued by the court is directed, or who is by law required or authorised to serve or execute any process issued by the court.

SCHEDULE.

Indorsement in Backing a Process.

Whereas proof hath this day been made before me, one of his Majesty's justices of the peace [sheriff or other magistrate] for the [county or burgh] of , that the name of *A. B.* to the within warrant [or summons or order or minute, or copy of order or minute or other document] subscribed is of the handwriting of the justice of the peace [sheriff or other magistrate] within mentioned, I do therefore hereby authorise *C. D.* who bringeth to me this warrant [or summons or order or minute, or copy of order or minute or other document], and all other persons by whom the same may be lawfully served [or executed], and also all constables and other peace officers of the said [county or burgh] of to serve and execute the same within the said last-mentioned [county or burgh].

Given under my hand this day of 18 .

SUMMARY JURISDICTION ACT, 1884.

[47 & 48 VICT. c. 43.]

ARRANGEMENT OF SECTIONS.

1. Short title.
 3. Repeal of obsolete punishments for non-payment of fines and other sums of money.
 4. Repeal of acts in schedule.
 5. Removal of doubts as to application of summary jurisdiction acts.
 6. Application of provisions of 42 & 43 Vict. c. 49, respecting appeals, to appeals under prior acts.
 7. Removal of doubts as to 42 & 43 Vict. c. 49, s. 50.
 8. Extension of 42 & 43 Vict. c. 49, s. 30.
 9. Removal of doubts as to the effect of 45 & 46 Vict. c. 50, s. 227 ; or 42 & 43 Vict. c. 49, s. 38.
 10. Saving for the recovery of poor rates, &c.
 11. Recovery of payments certified by district auditors.
 12. Effect of forms.
- Schedule.

An Act to repeal divers enactments rendered unnecessary by the Summary Jurisdiction Acts and other Acts relating to proceedings before courts of summary jurisdiction, and to make further provision for the uniformity of proceedings before those courts.
[7th August, 1884.]

1. This act may be cited as the Summary Jurisdiction Act, Short title.
1884.

2 and part of 3. *Repealed*—S.L.R. Act, 1898.

So much of any act as enacts that a person on nonpayment of a sum of money adjudged to be paid by the conviction or order of a court of summary jurisdiction in England shall be liable to be whipped or to any other punishment than imprisonment, with or without hard labour, is hereby repealed.

4. The acts contained in the schedule to this act are hereby repealed to the extent in the third column of that schedule mentioned.

Provided that—

(1) Where an enactment extends beyond England that enactment shall be repealed only as regards England ; and

(2) The expression in the said schedule “conviction or order of a court of summary jurisdiction” shall mean a

Repeal of
obsolete
punishments
for non-pay-
ment of fines
and other
sums of
money.
Repeal of
Acts in
schedule.

conviction or order made in pursuance of the Summary Jurisdiction Acts ;

„Sub-section 3. *Repealed*—S.L.R. Act, 1898.

A reference in any act of parliament or other document to any enactment repealed by this act, whether incorporating or applying such enactment or otherwise, shall be construed to refer to the corresponding enactment in the Summary Jurisdiction Acts, and so far as there is no corresponding enactment.

5. *Repealed in part*—S.L.R. Act, 1898.

Removal of doubts as to application of Summary Jurisdiction Acts.

The repeal enacted by this act shall not take away any jurisdiction of any justices to act summarily in any matter referred to in an enactment hereby repealed, and the Summary Jurisdiction Acts shall, so far as is consistent with the tenor thereof, apply to every proceeding before justices as to which the procedure is wholly or partly repealed by this act in substitution for the procedure so repealed.

11 & 12 Vict. c. 43.
42 & 43 Vict. c. 49.
Ante, pp. 1009, 1010, 1035.

Where by virtue of the repeal enacted by this act or otherwise any statute authorising the infliction by any justice or justices of a penalty or fine, either as a sole punishment or as an alternative punishment for imprisonment, provides no method for the recovery of such penalty or fine, sections nineteen and twenty-one of the Summary Jurisdiction Act, 1848, as amended by section twenty-one of the Summary Jurisdiction Act, 1879, shall apply to the recovery of such penalty or fine.

Application of provisions of 42 & 43 Vict. c. 49, respecting appeals to appeals under prior Acts.

6. Where a person is authorised by any act passed before the commencement of the Summary Jurisdiction Act, 1879, to appeal from the conviction or order of a court of summary jurisdiction made in pursuance of the Summary Jurisdiction Acts, or from the refusal to make any conviction or order in pursuance of those acts, to a court of general or quarter sessions, he shall after the passing of this act appeal to such court subject to the conditions and regulations contained in the Summary Jurisdiction Act, 1879, with respect to an appeal to a court of general or quarter sessions.

Extension of 42 & 43 Vict. c. 49, s. 30, *ante*, p. 1042.

8. *Repealed in part*—S.L.R. Act, 1898.

The power of the thirtieth section of the Summary Jurisdiction Act, 1879, given to the justices or council therein mentioned to provide a petty sessional court-house, shall be deemed to extend to providing more than one such petty sessional court-house if the justices or council shall think it necessary or expedient so to do.

A petty sessional court-house or occasional court-house for the use of the justices of any county may be outside the limits of the petty sessional division for which such court-house is provided or appointed, and may be either in the said county,

or in any adjoining county or borough, and for the purpose of the jurisdiction of any justices acting in such court-house the same shall be deemed to be within the county and the petty sessional division for which such justices act.

9. Nothing in section two hundred and twenty-seven of the Municipal Corporations Act, 1882, shall be taken to have repealed section thirty-eight of the Summary Jurisdiction Act, 1879.

10. Nothing in this act shall alter the procedure for the recovery of or any remedy for the non-payment of any poor rate, or of any rate or sum the payment of which is not adjudged by the conviction or order of a court of summary jurisdiction.

11. The payment of any sum certified by a district auditor to be due in accordance with the Poor Law Amendment Act, 1844, and the acts amending the same, or with any other act may, together with the costs of the proceedings for the recovery thereof, be enforced in like manner as if it were a sum due in respect of the poor rate.

12. *Repeated in part*—S.L.R. Act, 1898.

A form authorised by any rules for the time being in force in pursuance of the said section shall be of the same effect as if it were contained in the Summary Jurisdiction Act, 1848, or in any other act to which the form is made applicable.

Removal of doubts as to effect of 45 & 46 Vict. c. 50, s. 227, on 42 & 43 Vict. c. 49, s. 38 (*ante*, p. 1046).

Saving for the recovery of poor rates &c.

Recovery of payments certified by district auditors.

Effect of forms.

11 & 12 Vict. c. 43.

52 & 53 VICT. c. 63.

(Selected sections.)

An Act for consolidating enactments relating to the Construction of Acts of Parliament and for further shortening the Language used in Acts of Parliament. [30th August, 1889.

Re-enactment of Existing Rules.

Rules as to
gender and
number.

1.—(1) In this act and in every act passed after the year one thousand eight hundred and fifty, whether before or after the commencement of this act, unless the contrary intention appears,—

(a) words importing the masculine gender shall include females ; and

(b) words in the singular shall include the plural, and words in the plural shall include the singular.

(2) The same rules shall be observed in the construction of every enactment relating to an offence punishable on indictment or on summary conviction, when the enactment is contained in an act passed in or before the year one thousand eight hundred and fifty.

Application
of penal Acts
to bodies
corporate.

*Cf. *Pearks*
v. *Ward*, ante,
p. 224.

2.—(1) In the construction of every enactment relating to an offence punishable on indictment or on summary conviction, whether contained in an act passed before or after the commencement of this act, the expression* “person” shall, unless the contrary intention appears, include a body corporate.

(2) Where under any act, whether passed before or after the commencement of this act, any forfeiture or penalty is payable to a party aggrieved, it shall be payable to a body corporate in every case where that body is the party aggrieved.

Meanings of
certain words
in Acts since
1850.

3. In every act passed after the year one thousand eight hundred and fifty, whether before or after the commencement of this act, the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them ; namely,—

†The expression “month” shall mean calendar month :

The expression “land” shall include messuages, tenements, and hereditaments, houses, and buildings of any tenure :

The expressions “oath” and “affidavit” shall, in the case of persons for the time being allowed by law to affirm or declare instead of swearing, include affirmation and declaration, and the expression “swear” shall, in the like case, include affirm and declare.

Meaning of

4. In every act passed after the year one thousand eight

† So also in a sentence of “imprisonment,” 61 & 62 Vict. c. 41, s. 12 ; and cf. *Migoiti v. Colville*, 1879, 4 C. P. D. 233 ; 43 J. P. 620.

hundred and fifty and before the commencement of this act the expression "county" shall, unless the contrary intention appears, be construed as including a county of a city and a county of a town.

"county" in
past Acts.

5. In every act passed after the year one thousand eight hundred and sixty-six, whether before or after the commencement of this act, the expression "parish" shall, unless the contrary intention appears, mean, as respects England and Wales, a place for which a separate poor rate is or can be made, or for which a separate overseer is or can be appointed.

Meaning of
"parish."

8. Every section of an act shall have effect as a substantive enactment without introductory words.

Sections to be
substantive
enactments.

9. Every act passed after the year one thousand eight hundred and fifty, whether before or after the commencement of this act, shall be a public act and shall be judicially noticed as such, unless the contrary is expressly provided by the act.

Acts to be
public Acts.

10. Any act may be altered, amended, or repealed in the same session of parliament.

Amendment
or repeal of
Acts in same
session.

11.—(1) Where an act passed after the year one thousand eight hundred and fifty, whether before or after the commencement of this act, repeals a repealing enactment, it shall not be construed as reviving any enactment previously repealed, unless words are added reviving that enactment.

Effect of
repeal in
Acts passed
since 1850.

(2) Where an act passed after the year one thousand eight hundred and fifty, whether before or after the commencement of this act, repeals wholly or partially any former enactment and substitutes provisions for the enactment repealed, the repealed enactment shall remain in force until the substituted provisions come into operation.

New General Rules of Construction.

13. In this act and in every other act whether passed before or after the commencement of this act, the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them, namely:—

Judicial
definitions in
past and
future Acts.

(1) The expression "supreme court," when used with reference to England or Ireland, shall mean the supreme court of judicature in England or Ireland, as the case may be, or either branch thereof.

(2) The expression "court of appeal," when used with reference to England or Ireland, shall mean her majesty's court of appeal in England or Ireland, as the case may be.

(3) The expression "high court," when used with reference to England or Ireland, shall mean her majesty's high court of justice in England or Ireland, as the case may be.

13—*cont.*

(4) The expression “court of assize” shall, as respects England, Wales, and Ireland, mean a court of assize, a court of oyer and terminer, and a court of gaol delivery, or any of them, and shall, as respects England and Wales, include the central criminal court.

40 & 41 Vict.
c. 57.

(5) The expression “assizes,” as respects England, Wales, and Ireland, shall mean the courts of assize usually held in every year, and shall include the sessions of the central criminal court, but shall not include any court of assize held by virtue of any special commission, or, as respects Ireland, any court held by virtue of the powers conferred by section sixty-three of the Supreme Court of Judicature Act (Ireland), 1877.

(6) The expression “the Summary Jurisdiction Act, 1848.” shall mean the act of the session of the eleventh and twelfth years of the reign of her present majesty, chapter forty-three, intituled “An Act to Facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to Summary Convictions and Orders.”

11 & 12 Vict.
c. 43.42 & 43 Vict.
c. 49.27 & 28 Vict.
c. 53.44 & 45 Vict.
c. 33.

(7) The expression “the summary jurisdiction (England) acts” and the expression “the summary jurisdiction (English) acts” shall respectively mean the Summary Jurisdiction Act, 1848, and the Summary Jurisdiction Act, 1879, and any act, past or future, amending those acts or either of them.

(8) The expression “the summary jurisdiction (Scotland) acts” shall mean the Summary Jurisdiction (Scotland) Acts, 1864 and 1881, and any act, past or future, amending those acts or either of them.

14 & 15 Vict.
c. 93.

(9) The expression “the summary jurisdiction (Ireland) acts” shall mean, as respects the Dublin metropolitan police district, the acts regulating the powers and duties of justices of the peace or of the police of that district, and as respects any other part of Ireland, the Petty Sessions (Ireland) Act, 1851, and any act, past or future, amending the same.

(10) The expression “the summary jurisdiction acts” when used in relation to England or Wales shall mean the summary jurisdiction (England) acts, and when used in relation to Scotland the summary jurisdiction (Scotland) acts, and when used in relation to Ireland the summary jurisdiction (Ireland) acts.

(11) The expression “court of summary jurisdiction” shall mean any justice or justices of the peace, or other magistrate, by whatever name called, to whom jurisdiction is given by, or who is authorized to act under, the summary jurisdiction acts, whether in England, Wales, or Ireland, and whether acting under the summary jurisdiction acts or any of them, or under any other act, or by virtue of his commission, or under the common law.

(12) The expression “petty sessional court” shall, as

respects England or Wales, mean a court of summary jurisdiction consisting of two or more justices when sitting in a petty sessional court-house, and shall include the lord mayor of the city of London, and any alderman of that city, and any metropolitan or borough police magistrate or other stipendiary magistrate when sitting in a court-house or place at which he is authorized by law to do alone any act authorized to be done by more than one justice of the peace.

(13) The expression "petty sessional court-house" shall, as respects England or Wales, mean a court-house or other place at which justices are accustomed to assemble for holding special or petty sessions, or which is for the time being appointed as a substitute for such a court-house or place, and where the justices are accustomed to assemble for either special or petty sessions at more than one court-house or place in a petty sessional division, shall mean any such court-house or place. The expression shall also include any court-house or place at which the lord mayor of the city of London or any alderman of that city, or any metropolitan or borough police magistrate or other stipendiary magistrate is authorized by law to do alone any act authorized to be done by more than one justice of the peace.

(14) The expression "court of quarter sessions" shall mean the justices of any county, riding, parts, division, or liberty of a county, or of any county of a city, or county of a town, in general or quarter sessions assembled, and shall include the court of the recorder of a municipal borough having a separate court of quarter sessions.

19. In this act and in every act passed after the commencement of this act the expression "person" shall, unless the contrary intention appears, include any body of persons corporate or unincorporate.

Meaning of "person" in future Acts. Cf. s. 2, *ante*, p. 1066.

20. In this act and in every other act whether passed before or after the commencement of this act expressions referring to writing shall, unless the contrary intention appears, be construed as including references to printing, lithography, photography, and other modes of representing or reproducing words in a visible form.

Meaning of "writing" in past and future Acts.

21. In this, and in every other act, whether passed before or after the commencement of this act, the expression "statutory declaration" shall, unless the contrary intention appears, mean a declaration made by virtue of the Statutory Declarations Act, 1835.

Meaning of "statutory declaration" in past and future Acts. 5 & 6 Will. 4, c. 62.

26. Where an act passed after the commencement of this act authorizes or requires any document to be served by post, whether the expression "serve," or the expression "give" or

Meaning of service by post.

"send," or any other expression is used, then, unless the contrary intention appears, the service shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the document, and unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Meaning of
"committed
for trial."

27. In every act passed after the commencement of this act, the expression "committed for trial" used in relation to any person shall, unless the contrary intention appears, mean, as respects England and Wales, committed to prison with the view of being tried before a judge and jury, whether the person is committed in pursuance of section twenty-two or of section twenty-five of the Indictable Offences Act, 1848, or is committed by a court, judge, coroner, or other authority having power to commit a person to any prison with a view to his trial, and shall include a person who is admitted to bail upon a recognizance to appear and take his trial before a judge and jury.

11 & 12 Vict.
c. 42,
ante, pp.
975, 979.

References to
the crown.

30. In this act and in every other act, whether passed before or after the commencement of this act, references to the sovereign reigning at the time of the passing of the act or to the crown shall, unless the contrary intention appears, be construed as references to the sovereign for the time being, and this act shall be binding on the crown.

Construction
of statutory
rules, &c.

31. Where any act, whether passed before or after the commencement of this act, confers power to make, grant, or issue any instrument, that is to say, any order in council, order, warrant, scheme, letters patent, rules, regulations, or bye-laws, expressions used in the instrument, if it is made after the commencement of this act, shall, unless the contrary intention appears, have the same respective meanings as in the act conferring the power.

Construction
of provisions
as to exercise
of powers and
duties.

32.—(1) Where an act passed after the commencement of this act confers a power or imposes a duty, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed from time to time as occasion requires.

(2) Where an act passed after the commencement of this act confers a power or imposes a duty on the holder of an office, as such, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed by the holder for the time being of the office.

(3) Where an act passed after the commencement of this act confers a power to make any rules, regulations, or bye-laws, the power shall, unless the contrary intention appears, be construed as including a power, exercisable in the like

manner and subject to the like consent and conditions, if any, to rescind, revoke, amend, or vary the rules, regulations, or bye-laws.

33. Where an act or omission constitutes an offence under two or more acts, or both under an act and at common law, whether any such act was passed before or after the commencement of this act, the offender shall, unless the contrary intention appears, be liable to be prosecuted and punished under either or any of those acts or at common law, but shall not be liable to be punished twice for the same offence.

Provisions as to offences under two or more laws.

34. In the measurement of any distance for the purposes of any act passed after the commencement of this act, that distance shall, unless the contrary intention appears, be measured in a straight line on a horizontal plane.

Measurement of distances.

36.—(1) In this act, and in every act passed either before or after the commencement of this act, the expression “commencement,” when used with reference to an act, shall mean the time at which the act comes into operation.

“Commencement.”

(2) Where an act passed after the commencement of this act, or any order in council, order, warrant, scheme, letters patent, rules, regulations, or byelaws made, granted, or issued, under a power conferred by any such act, is expressed to come into operation on a particular day, the same shall be construed as coming into operation immediately on the expiration of the previous day.

38.—(1) Where this act or any act passed after the commencement of this act repeals and re-enacts, with or without modification, any provisions of a former act, references in any other act to the provisions so repealed shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted.

Effect of repeal in future Acts.

(2) Where this act or any act passed after the commencement of this act repeals any other enactment, then, unless the contrary intention appears, the repeal shall not—

- (a) revive anything not in force or existing at the time at which the repeal takes effect ; or
- (b) affect the previous operation of any enactment so repealed or anything duly done or suffered under any enactment so repealed ; or
- (c) affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any enactment so repealed ; or
- (d) affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment so repealed ; or
- (e) affect any investigation, legal proceeding, or remedy in

respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid ;
and any such investigation, legal proceeding, or remedy may be instituted, continued, or enforced, and any such penalty, forfeiture, or punishment may be imposed, as if the repealing act had not been passed.

Supplemental.

Definition of
"Act" in
this Act.

Saving for
past Acts.

Repeal.

Commence-
ment of Act.
Short title.

39. In this act the expression "act" shall include a local and personal act and private act.

40. The provisions of this act respecting the construction of acts passed after the commencement of this act shall not affect the construction of any act passed before the commencement of this act, although it is continued or amended by an act passed after such commencement.

41. The acts described in the schedule to this act are hereby repealed to the extent appearing in the third column of the schedule.

42. This act shall come into operation on the first day of January, one thousand eight hundred and ninety.

43. This act may be cited as the Interpretation Act, 1889.

SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
* * *	* * *	* * *
42 & 43 Vict. c. 49.	The Summary Jurisdiction Act, 1879.	In section twenty the sub-sections numbered (3) and (6). Section fifty.
47 & 48 Vict. c. 34.	The Summary Jurisdiction Act, 1884.	Section seven.
* * *	* * *	* * *

CRIMINAL EVIDENCE ACT, 1898.

[61 & 62 VICT. CH. 36.]

ARRANGEMENT OF SECTIONS.

Section.

1. Competency of witnesses in criminal cases.
 2. Evidence of person charged.
 3. Right of reply.
 4. Calling of wife or husband in certain cases.
 5. Application of Act to Scotland.
 6. Provision as to previous Acts.
 7. Extent, commencement, and short title.
- Schedule.

An Act to amend the Law of Evidence. [12th August, 1898.]

BE it enacted by the Queen's most excellent majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

1. Every person charged with an offence, and the wife or husband, as the case may be, of the person so charged, shall be a competent witness for the defence at every stage of the proceedings, whether the person so charged is charged solely or jointly with any other person. Provided as follows :—

Competency
of witnesses
in criminal
cases.

(a) A person so charged shall not be called as a witness in pursuance of this Act except upon his own application :

(b) The failure of any person charged with an offence, or of the wife or husband, as the case may be, of the person so charged, to give evidence shall not be made the subject of any comment by the prosecution :

(c) The wife or husband of the person charged shall not, save as in this Act mentioned, be called as a witness in pursuance of this Act except upon the application of the person so charged :

(d) Nothing in this Act shall make a husband compellable to disclose any communication made to him by his wife during the marriage, or a wife compellable to disclose any communication made to her by her husband during the marriage :

(e) A person charged and being a witness in pursuance of this Act may be asked any question in cross-examination notwithstanding that it would tend to criminate him as to the offence charged :

(f) A person charged and called as a witness in pursuance of this Act shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of or been charged with any offence other than that wherewith he is then charged, or is of bad character, unless—

(i.) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence wherewith he is then charged ; or

(ii.) he has personally or by his advocate asked questions of the witnesses for the prosecution with a view to establish his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or the witnesses for the prosecution ; or

(iii.) he has given evidence against any other person charged with the same offence.

(g) Every person called as a witness in pursuance of this Act shall, unless otherwise ordered by the court, give his evidence from the witness box or other place from which the other witnesses give their evidence :

(h) Nothing in this Act shall affect the provisions of section eighteen of the Indictable Offences Act, 1848, or any right of the person charged to make a statement without being sworn.

11 & 12 Vict.
c. 42.
Cf. *ante*,
p. 972.

Evidence of
person
charged.

Right of
reply.

Calling of
wife or
husband in
certain cases.

2. Where the only witness to the facts of the case called by the defence is the person charged, he shall be called as a witness immediately after the close of the evidence for the prosecution.

3. In cases where the right of reply depends upon the question whether evidence has been called for the defence, the fact that the person charged has been called as a witness shall not of itself confer on the prosecution the right of reply.

4.—(1) The wife or husband of a person charged with an offence under any enactment mentioned in the schedule to this Act may be called as a witness either for the prosecution or defence and without the consent of the person charged.

(2) Nothing in this Act shall affect a case where the wife or husband of a person charged with an offence may at common law be called as a witness without the consent of that person.

* * * * *

Provision as
to previous
Acts.

6.—(1) This Act shall apply to all criminal proceedings, notwithstanding any enactment in force at the commencement

of this Act, except that nothing in this Act shall affect the 40 & 41 Vict.
Evidence Act, 1877. c. 14.

(2) But this Act shall not apply to proceedings in courts
martial unless so applied—

(a) as to courts martial under the Naval Discipline Act, by 29 & 30 Vict.
general orders made in pursuance of section sixty-five of c. 109.
that Act ; and

(b) as to courts martial under the Army Act by rules made 44 & 45 Vict.
in pursuance of section seventy of that Act. c. 58.

7.— * * * * *

(3) This Act may be cited as the Criminal Evidence Act, Short title.
1898.

SUMMARY JURISDICTION ACT, 1899.

[62 & 63 VICT. CH. 22.]

An Act to amend the Summary Jurisdiction Act, 1879.

[9th August, 1899.]

Amendment
of schedule
to 42 & 43
Vict. c. 49.

See *ante*,
p. 1056.

Amendment
of 42 & 43
Vict. c. 49,
s. 11.

See *ante*,
p. 1030.

Explanation
to be given
of "false
pretences."

Short title.

1. The first schedule to the Summary Jurisdiction Act, 1879, shall include the offences mentioned or referred to in the schedule to this Act in the same manner as if the schedule to this Act formed part of the first schedule to the Summary Jurisdiction Act, 1879.

2. Section eleven of the Summary Jurisdiction Act, 1879 (which gives power to deal summarily with young persons by consent), shall extend to all indictable offences other than homicide, and accordingly in that section the words "specified in the first column of the first schedule to this Act" are hereby repealed, and the words "other than homicide" shall be substituted therefor.

3. Where a court of summary jurisdiction proposes to deal summarily in pursuance of this Act with a charge of obtaining by false pretences from any person any chattel, money, or valuable security with intent to defraud, the court shall, after the charge has been reduced to writing and read to the person charged, state in effect that a false pretence means a false representation by words, writing, or conduct that some fact exists or existed, and that a promise as to future conduct not intended to be kept is not by itself a false pretence, and may add any such further explanation as the court may deem suitable to the circumstances.

4. This Act may be cited as the Summary Jurisdiction Act, 1899.

SCHEDULE.

First Column.	Second Column.
Young Persons consenting and Adults pleading Guilty.	Adults Consenting.
1A. Obtaining or attempting to obtain by any false pretence from any person any chattel, money, or valuable security with intent to defraud against the provisions of the Larceny Act, 1861, section eighty-eight.	1A. Obtaining or attempting to obtain by any false pretence from any person any chattel, money, or valuable security with intent to defraud, where the amount of the money or the value of the whole of the chattels, valuable securities or property <i>alleged to have been obtained*</i> by such false pretence does not in the opinion of the court before whom the charge is brought exceed forty shillings. 24 & 25 Vict. c. 96.
The offence of unlawfully and maliciously setting fire to any part of any wood, coppice, or plantation of trees, or to any heath, gorse, furze or fern, under section sixteen of the Malicious Damage Act, 1861.	The offence of unlawfully and maliciously setting fire to any part of any wood, coppice, or plantation of trees, or to any heath, gorse, furze or ferns under section sixteen of the Malicious Damage Act, 1861, where the damage done to the property which is the subject of the alleged offence does not in the opinion of the court before whom the charge is brought exceed in amount forty shillings. 24 & 25 Vict. c. 97.

* N.B.—The words “alleged to have been obtained” do not appear applicable to the case of an *attempt* to obtain. It is not, however, clear whether this is a defect in drafting, or whether the legislature intended that (as in the case of larceny, &c.) an “attempt” to obtain by false pretences should be triable summarily whatsoever might be the amount involved. No mention is made of an “attempt” to commit the offence under 24 & 25 Vict. c. 97, next referred to in the schedule.

COSTS IN CRIMINAL CASES ACT, 1908.

[8 EDW. 7, CH. 15.]

SELECTED SECTIONS.

Payment of Costs out of Local Funds.

Section.

1. Power of court to direct payment out of local funds of costs of prosecution or defence.
2. Payment of costs directed to be paid at assizes or quarter sessions.
3. Payment of costs directed to be paid by court of summary jurisdiction or examining justices.
4. Definition of local funds and procedure for payment of orders on local funds.
5. Power to make regulations as to scales of costs, &c.

Order for Payment of Costs by Defendant or Prosecutor.

6. Power of court to order payment of costs of prosecution by defendant or of defence by prosecutor.

Supplemental.

7. Power as to costs where person committed for trial is not ultimately tried.
 8. Saving.
 9. Interpretation, &c.
 10. Repeal, commencement, short title, and extent.
- Schedule.

An Act to consolidate and amend the Law relating to the Payment of Costs in Criminal Cases.

[1st August, 1908.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Payment of Costs out of Local Funds.

1.—(1) The following courts, namely,—

- (a) a court of assize or a court of quarter sessions before which any indictable offence is prosecuted or tried, and
- (b) a court of summary jurisdiction by which an indictable offence is dealt with summarily under the Summary Jurisdiction Acts, and

Power of court to direct payment out of local funds of costs of prosecution or defence.

(c) any justice or justices before whom a charge not dealt with summarily is made against any person for an indictable offence (in this act referred to as the examining justices),

may on any such proceedings by order direct the payment of the costs of the prosecution or defence or both in accordance with the provisions of this act out of the funds of the county or county borough out of which they are payable under this act (in this act referred to as local funds).

(2) The costs which may be so directed to be paid are such sums as, subject to the regulations of the secretary of state under this act, appear to the court reasonably sufficient to compensate the prosecutor for the expenses properly incurred by him in carrying on the prosecution, and to compensate any person properly attending to give evidence for the prosecution or defence, or called to give evidence at the instance of the court, for the expense, trouble, or loss of time properly incurred in or incidental to the attendance and giving of evidence, and the amount of any costs so directed to be paid shall be ascertained as soon as practicable by the proper officer of the court.

(3) Where it has been certified that a prisoner ought to have legal aid under the Poor Prisoners Defence Act, 1903, the costs which may be directed to be paid under this section shall, subject to the regulations of the secretary of state under this act, include the fees of solicitor and counsel, the costs of a copy of the depositions, and any other expenses properly incurred in carrying on the defence.

3 Edw. 7,
c. 38.

(4) No expenses to witnesses, whether for the prosecution or defence, shall be allowed at a court of assize or quarter sessions before which any indictable offence is prosecuted or tried, if such witnesses are witnesses to character only, unless the court shall otherwise order.

3.—(1) As soon as the amount due to any person in respect of costs directed by a court of summary jurisdiction or by examining justices to be paid out of local funds has been ascertained, the proper officer—

Payment
of costs
directed to
be paid by
court of
summary
jurisdiction
or examining
justices.

(a) shall pay to that person the amount due forthwith, if the amount is due for travelling or personal expenses in respect of his attendance to give evidence ; and

(b) so far as the amount is not due in respect of attendance to give evidence, shall forward a certificate of the amount in the case of a committal to the proper officer of the court to which the defendant is committed, and in any other case to the clerk of the peace of the county or place for which the court or justices act.

Forms,
p. 1126.

(2) Any amount so paid by the proper officer to any person in respect of his attendance to give evidence shall be reimbursed to that officer by the treasurer of the county or borough out of the funds of which that sum is payable under this Act, and the treasurer shall be allowed any amount so reimbursed in his account.

(3) The certificate so forwarded shall be laid in the case of a certificate forwarded to the officer of the court to which the defendant is committed before that court, and in the case of a certificate forwarded to the clerk of the peace before the next court of quarter sessions, and in either case the court shall consider the certificate and cause an order to be made on the treasurer of the county or borough out of the funds of which the amount is payable for the payment of the amount so certified, or of any less amount which the court considers should have been allowed in the circumstances under this Act.

Where a certificate is forwarded to the officer of a court to which a defendant is committed for trial, the officer shall when practicable include the amount payable in respect of the costs so certified in the order for payment of any costs directed to be paid by the court to which the defendant is committed for trial.

Definition of
local funds
and procedure
for payment
of orders on
local funds.

4.—(1) Costs in the case of offences committed or supposed to have been committed in a county borough, whether the court directing the payment is held in the borough or not, are payable under this Act out of the borough fund or borough rate of the county borough, and costs in the case of other offences are payable under this Act out of the county fund of the administrative county in which the offence is committed or is supposed to have been committed.

For the purposes of this provision, offences committed within the jurisdiction of the admiralty of England shall be deemed to have been committed in the place where the offender is prosecuted or tried, or, where the offender is tried at the central criminal court, in the county of London; but any costs paid in the case of those offences out of the funds of the county or county borough shall be repaid out of moneys provided by Parliament.

(2) The treasurer of any county or county borough on whom an order is made for payment of any sum on account of costs under this act shall, upon sight of the order, pay out of the county fund or borough fund or rate, as the case may be, to the person named therein or his duly authorised agent the sum specified in the order, and shall be allowed the sum in his accounts.

(3) The council of every county and of every county borough

shall cause their treasurer, or some other person on his behalf, to attend at every court of assize or quarter sessions at which any indictable offence in respect of which an order can be made under this act on the treasurer is to be tried for the purpose of paying any orders so made, and to remain in attendance for that purpose during the sitting of the court, or until such hour as the court shall direct.

(4) For the purpose of meeting any change in the financial relations between any counties and boroughs which may arise by virtue of the provisions of this act as to the payment of any costs allowed under this act, any necessary equitable adjustment may be made by agreement between the councils of the counties or boroughs concerned, or, in default of agreement, by the Local Government Board.

The Board may at their option determine the matter as arbitrators, or otherwise, and, if they elect to determine the matter as arbitrators, the provisions of the Regulation of Railways Act, 1868, respecting arbitrations by the Board of Trade, and the enactments amending those provisions, shall apply as if they were herein re-enacted and in terms made applicable to the Local Government Board and the determination of matters under this subsection.

31 & 32 Vict.
c. 119.

For the purpose of this subsection the Local Government Board may hold any local inquiry, and subsections one and five of section eighty-seven of the Local Government Act, 1888, shall apply accordingly.

51 & 52 Vict.
c. 41.

5. A secretary of state may make regulations generally for carrying into effect this act, and in particular with respect to the following matters, namely:—

Power to
make regu-
lations as to
scales of
costs, &c.

- (a) the rates or scales of payment of any costs which are payable out of local funds under this act and the conditions under which any such costs may be allowed ; and
- (b) the manner in which an officer of the court making any payment on account of costs to any person in respect of his attendance to give evidence is to be reimbursed out of local funds ; and
- (c) the form of orders, certificates, and notices under this act, and the furnishing of information when certificates are forwarded under this act by officers of courts of summary jurisdiction or of examining justices.

Order for Payment of Costs by Defendant or Prosecutor.

6.—(1) The court by or before which any person is convicted of an indictable offence may, if they think fit, in addition to any other lawful punishment, order the person convicted to pay the whole or any part of the costs incurred in or about

Power of
court to
order pay-
ment of
costs of pro-
secution by

defendant or
of defence by
prosecutor.

the prosecution and conviction, including any proceedings before the examining justices, as taxed by the proper officer of the court.

(3) Where a charge made against any person for any indictable offence (not dealt with summarily) is dismissed by the examining justices, the justices may, if they are of opinion that the charge was not made in good faith, order the prosecutor to pay the whole or any part of the costs incurred in or about the defence, but if the amount ordered to be paid exceeds twenty-five pounds the prosecutor may appeal against the order to a court of quarter sessions in manner provided by the Summary Jurisdiction Acts, and no proceedings shall be taken upon the order until either the time within which the appeal can be made has elapsed without an appeal being made, or, in case an appeal is made, until the appeal is determined or ceases to be prosecuted.

(4) An order under this section for the payment of costs by the person convicted or by the prosecutor may be made in addition to an order directing payment of costs out of local funds, and, where an order is made directing payment out of local funds, the costs shall primarily be payable out of local funds in accordance with this act, but notice of any order under this section for the payment of costs by the person convicted or by the prosecutor shall be sent to the council of the county or borough out of the funds of which they are so payable.

(5) Any order under this section may be enforced, as to any costs primarily paid out of local funds, by the council of the county or borough out of the funds of which they have been so paid, and, as to any other costs, by the person to whom the costs are ordered to be paid, in the same manner as an order for the payment of costs made by the High Court in civil proceedings, or as a civil debt in manner provided by the Summary Jurisdiction Acts, and, in the case of costs which a person convicted is ordered to pay, out of any money taken on his apprehension from the person convicted, so far as the court so directs.

Supplemental.

Saving.

8. Nothing in this act shall affect the operation of any enactment for the time being in force which provides for the payment of the costs of the prosecution or defence of an indictable offence out of any assets, money, or fund other than local funds, or by any person other than the prosecutor or defendant.

Interpreta-
tion, &c.

9.—(1) In this act the expression “indictable offence” includes any offence punishable on summary conviction when

that offence is under the Summary Jurisdiction Acts deemed to be as respects the person charged an indictable offence, and the expression "prosecutor" includes any person who appears to the court to be a person at whose instance the prosecution has been instituted, or under whose conduct the prosecution is at any time carried on.

(2) Any reference in this act to a person committed for trial shall include a reference to a person whom a prosecutor is bound over to prosecute under the Vexatious Indictments Act, 1859, and any reference to the court to which a person is committed shall in such a case be construed as a reference to the court at which the prosecutor is so bound over to prosecute.

(3) This act shall not apply in the case of an offence in relation to the non-repair or obstruction of any highway, public bridge, or navigable river, and costs in any such case may be allowed as in civil proceedings as if the prosecutor or defendant were plaintiff or defendant in any such proceedings.

(4) This act shall apply in a case of a person committed as an incorrigible rogue under the Vagrancy Act, 1824, as if that person were committed for trial for an indictable offence, and in the case of any appeal under that act as if the hearing of the appeal by the court of quarter sessions were the trial of an indictable offence. 5 Geo. 4,
c. 83.

(5) For the purpose of section thirteen of the Criminal Appeal Act, 1907 (which relates to the costs of appeal), the hearing of a case stated under the Crown Cases Act, 1848, shall be deemed to be an appeal, and the person in relation to whose conviction the case is stated shall be deemed to be an appellant, and the provisions of this act giving power to direct the payment of the costs of the prosecution and defence shall not apply to the hearing of any case so stated. 7 Edw. 7,
c. 23.
11 & 12 Vict.
c. 78.

(6) A reference to the payment of costs out of local funds under this act shall be substituted for any reference to the payment of expenses in the case of an indictment for felony, or in cases of felony, or in the case of a misdemeanour under the Criminal Law Act, 1826, or any like reference in section one of the Inebriates Act, 1899, or in section thirteen of the Criminal Appeal Act, 1907, or in any other enactment. 62 & 63 Vict.
c. 35.
7 Edw. 7.
c. 23.
7 Geo. 4,
c. 64.
62 & 63 Vict.
c. 35.

10.—(1) The enactments specified in the schedule to this act are hereby repealed to the extent mentioned in the third column of that schedule :

Provided that, without prejudice to the general application of section thirty-eight of the Interpretation Act, 1889, with regard to the effect of repeals,—

(a) any regulations made by a secretary of state under

Repeal, commencement, short title, and extent.

52 & 53 Vict.
c. 63. *Ante*,
p. 1071.

14 & 15 Vict.
c. 55.

section five of the Criminal Justice Administration Act, 1851, shall continue to have effect as if they had been made under the powers given by this Act ; and

- (b) Where, in determining the amount of any fees to be paid to counsel or solicitors or any other matter which may be, but is not at the time of the passing of this act, regulated by regulations made by the secretary of state, regard is had under the practice as existing at the time of the passing of this act to any rates or scales of payment authorised by a court of quarter sessions, those rates and scales of payment shall have effect as if they were contained in regulations made by the secretary of state under this act ; and
- (c) The repeal of any enactment which imposes an obligation to pay a fee to any officer shall not affect the salary paid in lieu of fees to any person who is such an officer at the time of the passing of this act.
- (2) This act shall come into operation on the first day of January nineteen hundred and nine.
- (3) This act may be cited as the Costs in Criminal Cases Act, 1908.
- (4) This act shall not extend to Scotland or Ireland.

N.B.—SEE THE REGULATIONS OF NOVEMBER 28TH, 1908, MADE UNDER THIS ACT, *post*, p. 1125.

RULES AND SCHEDULE OF FORMS

TOGETHER WITH

RULES AND SCHEDULE OF FORMS

UNDER THE

EMPLOYERS AND WORKMEN ACT, 1875.

RULES.

1. Short title.
2. Commencement.
3. Register.
4. Special appropriation of fine under a statute.
5. Returns.
6. Form of account of fines, &c.
7. Rule as to sums of which payment is deferred or to be made by instalments.
8. Provision for dispensing with unnecessary accounts.
9. Entry of receipts by clerk.
10. Remitted fees book.
11. Crown fines.
12. Application of sum due under forfeited security.
13. } Taking of recognizances by governor of prison.
- 13a. }
14. Form of security under Act.
15. Security book.
16. Notice to principal of forfeiture of security.
17. Mode of application to vary order for sureties.
18. Time for stating special case.
19. Particulars of claim for civil debt.
20. Judgment summons.
21. Service of judgment summons.
22. Issue and proof of service of judgment summons.
23. Time of service.
24. Adjournment of hearing of judgment summons.
25. Witnesses on judgment summons.
26. Date of order of commitment.
27. Payment by judgment debtor.
28. Discharge of judgment debtor.
29. Costs of plaintiff in enforcing order.
30. Fee for taking declaration.
31. Forms.
32. Annulment of forms and rules.

RULES.

- Short title. 1. These rules may be cited as "The Summary Jurisdiction Rules, 1886."
- Commencement. 2. These rules shall come into operation on the first day of January, 1887.
- Register. 3. The clerk of each court of summary jurisdiction shall keep the register required to be kept by him in pursuance of the Summary Jurisdiction Act, 1879, with such particulars as appear by the form in Part III. of the schedule hereto.
- Special appropriation of fine under a statute. 4. Where in pursuance of any statute a court of summary jurisdiction specially directs the appropriation of a fine, the statute under which the appropriation is made shall be set forth in the register and authenticated by the signature of the justice or one of the justices constituting the court.
- Returns. 5. The return referred to in section twenty-two, subsection (4) of the Summary Jurisdiction Act, 1879, shall contain the particulars required to be entered in the register. The justice signing any such return shall cause it to be sent to the clerk who keeps the register for his petty sessional division, and that clerk shall enter the return in his register.
- Form of account of fines. 6. The form of account to be rendered by clerks of courts of summary jurisdiction of fines, fees, and other sums received by them shall be the form given in Part III. of the schedule hereto, or a form to the like effect approved by the local authority under the Justices' Clerks Act, 1877, and shall be rendered quarterly or at any less interval, as may be directed by that authority. Provided that nothing in this rule shall apply to the police courts of the metropolis, Chatham or Sheerness.
- Rule as to sums of which payment is deferred or to be made by instalments. 7. All fines imposed by a court of summary jurisdiction shall appear in this account in chronological order, and where payment is deferred or to be made by instalments, the fact shall be shown in the column headed "Remarks." When the whole of the sum has been paid or recovered by distress, or the term of imprisonment imposed in default of payment or of sufficient distress has expired, the clerk shall then enter the sum in the account. Provided that, though the whole of the sum may not have been paid or recovered, the instalments received shall be accounted for at such times and in such manner as the above-mentioned local authority may direct.
- Provision for dispensing with unnecessary accounts. 8. Where a clerk of a court of summary jurisdiction renders an account in the form required or authorised by these rules to the authority to whom he is required to render it, he shall not

be required to render any other account relating to the same particulars.

9. The clerk of each court of summary jurisdiction shall enter on the day of its receipt each sum of money received by him on any account whatever. Each instalment so received shall be entered in a book called the instalment ledger to an account to be opened in respect of the proceeding in which the sum is paid.

Entry of
receipts by
clerk.

10. The book required to be kept by section twelve of the act 14 & 15 Vict. c. 55, shall be kept according to the form in Part III. of the schedule hereto, and shall be called the "remitted fees book."

Remitted fees
book.

11. The clerk of each court of summary jurisdiction shall send on the tenth day of January, April, July, and October in each year to the secretary of state for the home department, Whitehall, without paying the postage, a certified statement, in the form in Part III. of the schedule hereto, of all fines which have been imposed by the court during the previous three months, and which are payable wholly or in part to her majesty or to the exchequer. If no such fines have been imposed, the statement shall be certified in blank.

Crown fines.

12. Where a court of summary jurisdiction has enforced payment of any sum due by a principal in pursuance of a security under the Summary Jurisdiction Act, 1879, which appears to the court to be forfeited, the sum shall, unless it is recoverable as a civil debt, be paid to the clerk of the court, and shall be paid and applied by him in the manner in which fines imposed by the court, in respect of which fines no special appropriation is made, are payable and applicable.

Application
of sum due
under for-
feited
security.

13. Where a court of summary jurisdiction has fixed as respects any recognizance the amount in which a principal and a surety or sureties are to be bound, the governor of a prison shall not be required to take the recognizance of any person proposed as surety, unless the person so proposed produces a certificate in writing from a court of summary jurisdiction, or a clerk thereof, that he has satisfied the court or clerk of his ability to pay the amount for which he is to be bound in the event of the recognizance becoming forfeited.

Taking of
recognizances
by governor
of prison.

13a. The certificate mentioned in Rule 13 of the Summary Jurisdiction Rules, 1886 (which relates to the taking of recognizances by the governor of a prison) shall be in the form in schedule annexed hereto, or to the like effect, and the person proposed as surety shall sign his name on the margin of the certificate (**Form 50, post, p. 1115**).

30 Dec. 1903.

14. Any security given under the Summary Jurisdiction Act, 1879, by an oral or written acknowledgment, shall be in the

Form of
security
under Act.

Form 36,
p. 1110.
Form 9,
p. 1120.
Security book.

form of an undertaking, and may be in the appropriate form in Part I. or Part II. of the schedule hereto, or in any other form to the like effect.

15. The clerk of each court of summary jurisdiction shall keep a security book, and shall enter therein, with respect to each security given in relation to any proceeding before the court, the name and address of each person bound, showing whether he is bound as principal or as surety, the sum in which each person is bound, the undertaking or condition by which he is bound, the date of the security, and the person before whom it is taken. Where any such security is not entered into before the court, or before the clerk of the court, the person before whom it is entered into shall make a return of it, showing the above particulars, to the clerk of the court. The security book, and any certified extract therefrom, shall be evidence of the several matters hereby required to be entered in the security book in like manner as if the security book were the register.

Notice to
principal of
forfeiture of
security.

16. Not less than two clear days before a warrant of distress is issued for a sum due by a principal in pursuance of a forfeited security under the Summary Jurisdiction Act, 1879, the clerk of the court of summary jurisdiction issuing the warrant shall cause notice of the forfeiture to be served on the principal. Service of the notice may be effected either by prepaid letter sent to the address mentioned in the security, or as service of a summons may be effected under the Summary Jurisdiction Acts.

Mode of
application
to vary order
for sureties.

17. An application under section twenty-six of the Summary Jurisdiction Act, 1879, shall be an application for a summons requiring the complainant to show cause why the order made on his complaint should not be varied.

Application
for special
case.
20th March,
1906.

18. An application to a court of summary jurisdiction under section thirty-three of the Summary Jurisdiction Act, 1879, to state a special case shall be made in writing and shall be left with the clerk of the court at any time *within seven clear days* from the date of the proceeding to be questioned, and there shall also be left with him a copy of such application for each of the justices constituting such court, which shall be duly forwarded by him to each of the said justices. The case shall be stated within three calendar months after the date of the application and after the recognizance shall have been entered into.

Particulars of
claim for
civil debt.

19. In the case of a claim for a civil debt recoverable summarily, the particulars of the claim shall, unless embodied in the summons, be annexed to, and, if so annexed, shall be deemed part of the summons.

Judgment
summons.

20. An order of commitment under section thirty-five of the

Summary Jurisdiction Act, 1879, shall not be made unless a summons to appear and be examined on oath (hereinafter called a judgment summons) has been served on the judgment debtor.

21. The judgment summons shall, whenever it is practicable, be served personally on the judgment debtor, but if it is made to appear on oath to a court of summary jurisdiction that prompt personal service is for any reason impracticable, the court may make such order for substituted or other service as the court may think just.

Service of
judgment
summons.

22. A judgment summons may issue although no distress warrant has been applied for, and its service, where made out of the jurisdiction of the court of summary jurisdiction issuing the summons, may be proved by affidavit or solemn declaration.

Issue and
proof of
service of
judgment
summons.

23. A judgment summons shall be served not less than two clear days before the day on which the judgment debtor is required to appear.

Time of
service.

24. The hearing of a judgment summons may be adjourned from time to time.

Adjournment
of hearing of
judgment
summons.

25. Any witness may be summoned to prove the means of the judgment debtor, in the same manner as witnesses are summoned to give evidence on the hearing of a complaint.

Witnesses on
judgment
summons.

26. An order of commitment made under section thirty-five of the Summary Jurisdiction Act, 1879, shall, on whatever day it is issued, bear date on the day on which it was made.

Date of order
of commit-
ment.

27. When an order of commitment for non-payment of money is issued, the defendant may, at any time before he is delivered into the custody of the governor of a prison, pay to the officer holding the order the amount indorsed thereon as that on the payment of which he may be discharged, and on receiving that amount the officer shall discharge the defendant, and shall forthwith pay over the amount to the clerk of the court of summary jurisdiction which made the order.

Payment by
judgment
debtor.

28. The sum indorsed on the order of commitment as that on payment of which the prisoner may be discharged may be paid to the clerk of the court of summary jurisdiction from which the commitment order was issued, or to the governor of the prison in whose custody the prisoner is. Where it is paid to the clerk, he shall sign a certificate of the payment, and upon receiving the certificate by post or otherwise the governor of the prison in whose custody the prisoner then is shall forthwith discharge the prisoner. Where it is paid to the governor of the prison, he shall, on payment to him of that amount, with costs sufficient to pay for sending the amount by post office order or otherwise to the court of summary jurisdiction

Discharge of
judgment
debtor.

under the order of which the prisoner was committed, sign a certificate of the payment, and discharge the prisoner, and forthwith transmit the sum so received to the clerk of the said court.

Costs of
plaintiff in
enforcing
order.

29. All costs incurred by the plaintiff in endeavouring to enforce an order shall, unless the court shall otherwise order, be deemed to be due in pursuance of the order, as if it were made under section five of the Debtors Act, 1869.

Fee for taking
declaration.

30. The fee for taking a declaration under section forty-one of the Summary Jurisdiction Act, 1879, shall be one shilling.

Forms.

31. The forms in the schedule hereto, or forms to the like effect, may be used, with such variations as circumstances may require.

Annulment of
forms and
rules.

32. The forms in the schedule to the Summary Jurisdiction Act, 1848, the Summary Jurisdiction Rules, 1880, with the forms in the schedule thereto, the Summary Jurisdiction Rules of the 24th of August, 1880, and the Summary Jurisdiction Rule of 1881, are hereby annulled.

(Signed) HERSCHELL, C.

The 16th July, 1886.

SCHEDULE.

PART I.

Forms in Summary Proceedings other than for Civil Debts.

See *post*,
pp. 1092
et seq.

1. Information or complaint.
2. Summons to defendant.
3. Summons for forfeiture of recognisance.
4. Summons to vary sureties, &c.
5. Summons to witness.
6. Warrant for apprehension of defendant.
7. Warrant for apprehension of a witness.
8. Warrant for apprehension of witness in first instance.
9. Commitment of witness.
10. Commitment on remand, &c.
11. Conviction for penalty, &c.
12. Conviction (imprisonment).
13. Conviction (forfeited recognisance).
14. Conviction of child for indictable offence.
15. Conviction (by consent) for indictable offence.
16. Conviction (on plea of guilty) for indictable offence.
17. Conviction (with security).
18. Order for money (not a civil debt).
19. Order for other matters.
20. Order of recognisance to keep the peace, &c.
21. Order of dismissal.

22. Order of dismissal with damages.
23. Certificate of dismissal.
24. Warrant of distress (for penalty, &c.).
25. Warrant of distress on an order for money (not a civil debt), or costs, &c.
26. Warrant of distress for sum due under recognisance.
27. Return of insufficient distress to be indorsed on warrant.
28. Account of charges incurred on a warrant of distress.
29. Commitment in lieu of distress.
30. Commitment pending return to warrant of distress.
31. Commitment in default of distress.
32. Commitment for a penalty without distress.
33. Commitment on sentence of imprisonment only.
34. Commitment on an order in the first instance.
35. Endorsement on process.
36. Recognisance.
37. Endorsement of forfeiture of recognisance.
38. Endorsement mitigating forfeiture, &c.
39. Notice of recognisance to be given to the defendant and his sureties.
40. Security for penalty, &c.
41. Security to perform condition of forfeited recognisance.
42. Notice to principal of forfeiture of security.
43. Order varying order for sureties.
44. Order to bring up prisoner for bail.
45. Notice to parent or guardian of child charged with indictable offence.
46. Declaration of service.
47. Declaration of handwriting and seal.
48. Certificate of costs of prosecution of indictable offence dealt with summarily.
49. Certificate of clerk of the peace that the costs of an appeal have not been paid.
50. Certificate of ability of surety to pay.

PART II.

Forms applicable to Proceedings for the Recovery of a Civil Debt.

1. Complaint.
2. Summons to appear.
3. Summons to witness.
4. Judgment.
5. Judgment summons.
6. Order of commitment.
7. Certificate for discharge from custody.
8. Distress warrant.
9. Undertaking to pay civil debt.

See *post*
pp. 1116
et seq.

PART I.

FORMS IN SUMMARY PROCEEDINGS OTHER THAN FOR CIVIL DEBTS.

1.

Information or Complaint.

In the [county of . Petty sessional division of].

The day of one thousand hundred and .

The information [or complaint] of C. D. of (address and description), who upon oath [or affirmation] states that A. B. of (address and description) on the day of , at , in the aforesaid, did *

Taken before me,

J. P.,

Justice of the peace for the [county] aforesaid.

* See forms, post, pp. 1220 et seq.

2.

Summons to Defendant.

In the [county of . Petty sessional division of].

To A. B. of

Information on oath [or affirmation] has been laid [or complaint has been made] this day by for that you on the day of at in the aforesaid, did *

You are therefore hereby summoned to appear before the court of summary jurisdiction sitting at on day the day of , at the hour of in the noon, to answer to the said information [or complaint].

Dated the day of one thousand hundred and .

J. P.,

Justice of the peace for the [county] aforesaid.

(L.S.)

* See forms, post, pp. 1220 et seq.

3.

Summons for Forfeiture of Recognisance.

In the [county of . Petty sessional division of].

To A. B. of

You are hereby summoned to appear before the court of summary jurisdiction sitting at on day the day of , at the hour of in the noon, to show cause why the recognisance entered into the day of whereby you are bound to pay the sum of should not be adjudged to be forfeited.

Dated the day of one thousand hundred and .

J. P.,

Justice of the peace for the [county] aforesaid.

(L.S.)

4.

Summons to Vary Sureties, &c.

In the [county of . Petty sessional division of].

To A. B. of

You are hereby summoned to appear before the court of summary jurisdiction sitting at on day the day of , at the hour of in the noon, to show cause why the order made by the court of summary jurisdiction aforesaid [or sitting at], on the day of , against you to find suret should not be varied or otherwise dealt with.

Dated the day of one thousand hundred and .

J. P.,

Justice of the peace for the [county] aforesaid.

(L.S.)

5.

Summons to Witness.

In the [county of . Petty sessional division of].

To E. F.

A. B. has been charged by for that he on the day of , at in the aforesaid, did :

And it appearing to me by the oath [or affirmation] of that you are likely to give material evidence therein on behalf of the informant [or complainant or defendant], and will not voluntarily appear for that purpose :

You are therefore hereby summoned to appear before the court of summary jurisdiction sitting at , on day the day of , at the hour of in the noon, to testify what you know in such matter.

Dated the day of one thousand hundred and .

J. P.,

Justice of the peace for the [county] aforesaid.

(L.S.)

6.

Warrant for Apprehension of Defendant.

In the [county of . Petty sessional division of].

To each and all of the constables of

Information on oath [or affirmation] has been laid [or complaint has been made] this day [or on the day of] by that A. D. hereinafter called the defendant on the day of at in the aforesaid, did .

[Where the defendant has been summoned, and has not appeared, add] And the defendant was thereupon summoned to appear before the court of summary jurisdiction sitting at on day the

day of at the hour of in the noon, to answer to the said charge:

And oath [*or affirmation, or declaration*] has been made that the defendant was duly served with the summons, but did not appear, and that such information [*or complaint*] is true:

You are therefore hereby commanded to bring the defendant before the court of summary jurisdiction at forthwith [*or on the day of* , at the hour of in the noon], to answer to the said information [*or complaint*].

Dated the day of one thousand hundred and .

J. P.,

Justice of the peace for the [*county*] aforesaid.

(L.S.)

7.

Warrant for Apprehension of a Witness.

In the [*county of* . *Petty sessional division of*].

To each and all of the constables of

E. F. was duly summoned to appear before the court of summary jurisdiction sitting at on day the day of , at the hour of in the noon, to testify what he should know concerning a certain information [*or complaint*] against *A. B.*:

And he has neither appeared thereto, nor offered any just excuse for his neglect:

And it has been proved on oath [*or affirmation*] that the summons has been duly [*indorsed and*] served on him, and that a reasonable sum has been paid [*or tendered*] to him for his costs and expenses in that behalf:

You are therefore hereby commanded to bring him before the court of summary jurisdiction sitting at forthwith [*or on the day of* , at the hour of in the noon], to testify what he knows concerning the said matter.

Dated the day of one thousand hundred and .

J. P.,

Justice of the peace for the [*county*] aforesaid.

(L.S.)

8.

Warrant for Apprehension of Witness in First Instance.

In the [*county of* . *Petty sessional division of*].

To each and all of the constables of the of .

A. B. has been charged by for that he on the day of , at in the aforesaid, did

And it appearing to me by the oath [*or affirmation*] of that *E. F.* is likely to give material evidence concerning the said matter,

and that it is probable he will not attend to give evidence unless compelled so to do :

You are therefore hereby commanded to bring him before the court of summary jurisdiction sitting at forthwith [or on the day of at the hour of in the noon], to testify what he knows concerning the said matter.

Dated the day of one thousand hundred and .

J.P.,

Justice of the peace for the [county] aforesaid.

(L.S.)

9.

Commitment of Witness.

In the [county of . Petty sessional division of].

To each and all of the constables of , and to the governor of his Majesty's prison at .

E. F., having appeared or being brought before the court of summary jurisdiction sitting at on day, the day of to testify what he should know concerning a certain matter against *A. B.*, refused to take an oath [or affirmation] [or having taken an oath or affirmation] refused to answer any [or a certain] question put to him concerning the premises, and did not offer any just excuse for his refusal :

You the said constables are therefore hereby commanded to convey the said *E. F.* safely to the said prison, and there deliver him to the governor thereof, together with this warrant, and you, the governor of the said prison, to receive him into your custody, and keep him for the space of , unless he in the meantime consents to be examined and answer concerning the premises.

Dated the day of one thousand hundred and .

J. P.,

Justice of the peace for the [county] aforesaid.

(L.S.)

10.

Commitment on Remand, &c.

In the [county of . Petty sessional division of].

To each and all of the constables of , and to the governor of his Majesty's prison at .

A. B., hereinafter called the defendant, being brought before the court of summary jurisdiction sitting at , charged with having

The hearing of the case being adjourned :

You the said constables are therefore hereby commanded to convey the defendant to the said prison, and there to deliver him to the governor thereof, together with this warrant, and you, the governor of the said prison, to receive him into your custody, and

In case of a young person, see rule vi., post, p. 1139. For commitment to place of detention, see Form 3, post, p. 1141.

keep him until the day of , 19 , and on that day to
convey him before the court of summary jurisdiction sitting at
 at the hour of in the noon, to be further dealt
with according to law.

Dated the day of one thousand hundred
and .

J. P.,
Justice of the peace for the [county] aforesaid.

(L.S.)

Indorsement where Bail is allowed.

I hereby certify that I consent to the defendant being bailed,
himself in pounds and sureties in pounds each.

11.

Conviction for Penalty, &c.

In the [county of . Petty sessional division of].

In case of a
young person,
see rule vi.,
post, p. 1139,
and Form 5,
post, p. 1142.

Before the court of summary jurisdiction sitting at .
The day of one thousand hundred and .
A. B., hereinafter called the defendant, is this day convicted for
that he, on the day of , at within the afore-
said, did .

And it is adjudged that the defendant for his said offence do
forfeit and pay the sum of and do also pay the further sum
of for compensation and for costs [by instalments of
 for every days, the first instalment to be paid] forth-
with [or on the day of] :

And in default of payment it is adjudged that [the sums due
under this adjudication be levied by distress and sale of the defen-
dant's goods and in default of sufficient distress that] the defendant
be imprisoned in his Majesty's prison at and there kept [to
hard labour] for the space of unless the said sums [and all
costs and charges of the [said distress and] commitment and of his
conveyance to the said prison] be sooner paid.

J. P.,
Justice of the peace for the [county] aforesaid.

(L.S.)

* As to the necessity for securing the signatures and seals of
TWO justices, see *ante*, p. 97.

Indorsement where Security for payment is permitted.

It is ordered that the defendant be at liberty to give to the satis-
faction of [this court] security in the sum of with
suret in the sum of [each] for the due payment of
the said sums as adjudged.

NOTE—It may be convenient in practice to have separate forms
printed off for the different forms of adjudication.

12.

Conviction (Imprisonment).

In the [county of . Petty sessional division of].
 Before the court of summary jurisdiction sitting at .
 The day of one thousand hundred
 and .
A. B., hereinafter called the defendant, is this day convicted of
 that he, on the day of , at , within the
 aforesaid, did

In case of a
young person,
 see rule vi.,
post, p. 1139,
 and **Form 6**,
post, p. 1143.

And it is adjudged that the defendant, for his said offence, be
 imprisoned in his Majesty's prison at and there kept [*to hard*
labour] for the space of .

[*If costs are ordered, add:—*

And it is ordered that the defendant pay to the sum of
 for costs [by instalments of for every days, the first
 instalment to be paid] forthwith [*or*, on the day of]:

And in default of payment it is ordered that the sum due be
 levied by distress and sale of the defendant's goods, and in default
 of sufficient distress that the defendant be imprisoned in the said
 prison for the space of commencing at the termination of the
 imprisonment before adjudged, unless the said sum [and all costs
 and charges of the [said distress and] commitment, and of his con-
 veyance to the said prison] be sooner paid.]

**J. P.*,

Justice of the peace for the [county] aforesaid.

(L.S.)

* Cf. Form 11, and *ante*, p. 97.

13.

Conviction (Forfeited Recognisance).

In the [county of . Petty sessional division of].
 Before the court of summary jurisdiction sitting at .
 The day of one thousand hundred
 and .

A. B., hereinafter called the defendant, was by his recognisance
 entered into the day of , bound in the sum of , and
 his sureties *C. D.* and *E. F.* in the sum of each, the condition
 of the recognisance being that the said defendant should

And it being now proved that the defendant was on the day
 of , convicted of the offence of having , the
 same being a breach of the said condition:

It is therefore adjudged that the said recognisance be forfeited,
 and that the said pay to the sum of , and the
 further sum of for costs, [by instalments of for every
 days, the first instalment to be paid] forthwith [*or* on the day
 of].

And in default of payment it is ordered that the sum due from
 the said under this adjudication be levied by distress and sale
 of his goods, and in default of sufficient distress that he be imprisoned
 in his Majesty's prison at for the space of unless the

said sums [and all costs and charges of the [said distress and] commitment, and of his conveyance to the said prison], be sooner paid.

*J. P.

Justice of the peace for the [county] aforesaid.

(L.S.)

* Cf. Form 11, and *ante*, p. 97.

14.

Conviction of Child for Indictable Offence.

[In the case of a *young person*, see rule vi., *post*, p. 1139, and FORM No. 7, *post*, p. 1144.]

15.

Conviction (by consent) for Indictable Offence.

In the [county of . Petty sessional division of].

In the case of a *young person*, see rule vi., *post*, p. 1139, and **Form 8**, *post*, p. 1144.

Before the court of summary jurisdiction sitting at .
The day of one thousand hundred
and
A. B., hereinafter called the defendant, being an adult within the meaning of the Summary Jurisdiction Act, 1879, is this day charged for that on the day of at in the aforesaid, did :

The defendant having consented to be dealt with summarily, is convicted of the said offence:

And it is adjudged that [*proceed as in other forms of conviction*].

*J. P.

Justice of the peace for the [county] aforesaid.

(L.S.)

* Cf. Form 11, and *ante*, p. 97.

16.

Conviction (on Plea of Guilty) for Indictable Offence.

In the [county of . Petty sessional division of].

Before the court of summary jurisdiction sitting at .
The day of one thousand hundred and
A. B., hereinafter called the defendant, is this day charged for that he on the day of , at in the aforesaid, did :

And the defendant having pleaded guilty to the charge, is convicted of the offence, and is adjudged to be imprisoned in his Majesty's prison at and there kept [*to hard labour*] for the space of .

[*If costs are ordered, add:—*

And it is ordered that the defendant pay to the sum of for costs [by instalments of for every days, the first instalment to be paid] forthwith [*or on the day of*]:

And in default of payment it is ordered that the sum due be levied by distress and sale of defendant's goods, and in default of sufficient distress that the defendant be imprisoned in the said prison for the space of commencing at the termination of the imprisonment before adjudged, unless the said sum [and all costs and charges of the [said distress and] commitment, and of his conveyance to the said [prison] be sooner paid.]

* *J. P.*,

Justice of the peace for the [county] aforesaid.

(L.S.)

* Cf. Form 11, and *ante*, p. 97.

17.

Conviction (with Security).

In the [county of . Petty sessional division of].

But see now
Form 22, post,
p. 1102.

Before the court of summary jurisdiction sitting at
The day of one thousand hundred and .
A. B., hereinafter called the defendant, is this day convicted for
that he on the day of , at in the aforesaid,
did :

But the court being of opinion that the said offence was of so trifling a nature that it is inexpedient to inflict any [*or any other than a nominal*] punishment, and the defendant having given security to the satisfaction of this court to appear for sentence when called upon [*or to be of good behaviour*], he is discharged.

[*If costs are ordered, add:—*

And it is ordered that the defendant pay to the said the sum of for costs [by instalments of for every days, the first instalment to be paid] forthwith [*or on the day of*]:

And in default of payment it is ordered that the sum due be levied by distress and sale of the defendant's goods, and in default of sufficient distress that the defendant be imprisoned in his Majesty's prison at for the space of unless the said sum [and all costs and charges of the [said distress and] commitment, and of his conveyance to the said prison] be sooner paid.]

* *J. P.*,

Justice of the peace for the [county] aforesaid.

(L.S.)

* Cf. Form 11, and *ante*, p. 97.

18.

Order for Money (not a Civil Debt).

In the [county of . Petty sessional division of].

Before the court of summary jurisdiction sitting at .

The day of one thousand hundred and .

A. B. having made a complaint that C. D., hereinafter called the defendant, on the day of , at within the aforesaid, did :

On hearing the said complaint, it is ordered that the defendant pay to the said the sum of , and also the sum of for costs, [by instalments of for every days, the first instalment to be paid] forthwith [or on the day of]:

And in default of payment it is ordered that [the said sums be levied by distress and sale of the defendant's goods, and in default of sufficient distress that] the defendant be imprisoned in his Majesty's prison at and there kept [to hard labour] for the space of , unless the said sums [and all costs and charges of the [said distress and] commitment and of his conveyance to the said prison] be sooner paid.

*J. P.,

Justice of the peace for the [county] aforesaid.

(L.S.)

* Cf. Form 11, and ante, p. 97.

19.

Order for other Matters.

In the [county of . Petty sessional division of].

Before the court of summary jurisdiction sitting at .

The day of one thousand hundred and .

A. B. having made a complaint that C. D., hereinafter called the defendant, on the day of at in the aforesaid, did :

On hearing the said complaint, it is ordered that the defendant do :

[If imprisonment is ordered, add :

And it is adjudged that if the defendant neglect or refuse to obey this order, he be imprisoned in his Majesty's prison at for the space of [or unless the said order be sooner obeyed].]

[If costs are ordered, add :

And it is ordered that the defendant pay to the said the sum of for costs [by instalments of for every days,

the first instalment to be paid] forthwith [or on the day of].

And in default of payment it is ordered that the sum due be levied by distress and sale of the defendant's goods, and in default of sufficient distress that the defendant be imprisoned in the said prison for the space of commencing at the termination of the imprisonment before adjudged, unless the said sum [and all costs and charges of the [said distress and] commitment, and of his conveyance to the said prison] be sooner paid.]

* *J. P.*,

Justice of the peace for the [county] aforesaid.

* Cf. Form 11, and *ante*, p. 97.

20.

Order of Recognisance to keep the Peace, &c.

In the [county of . Petty sessional division of].

Before the court of summary jurisdiction sitting at .

The day of one thousand hundred and .

A. B. having made a complaint that *C. D.*, hereinafter called the defendant, on the day of at , in the aforesaid, did :

It is adjudged that the defendant do forthwith to the satisfaction of enter into a recognisance in the sum of with suret in the sum of [each] to keep the peace and be of good behaviour towards his Majesty and all his liege people, and especially towards the complainant, for the term of now next ensuing:

And it is adjudged that if the defendant fail to comply with this order he be imprisoned in his Majesty's prison at for the space of unless he sooner complies with this order.

[*If costs are ordered, add:—*

And it is ordered that the defendant pay to the said the sum of for costs [by instalments of for every days, the first instalment to be paid] forthwith [or on the day of]:

And in default of payment it is ordered that the sum due be levied by distress and sale of the defendant's goods, and in default of sufficient distress that the defendant be imprisoned in the said prison for the space of commencing at the termination of the imprisonment before ordered, unless the said sum [and all costs and charges of the [said distress] and commitment, and of his conveyance to the said prison] be sooner paid.]

* *J. P.*,

Justice of the peace for the [county] aforesaid.

(L.S.)

* Cf. Form 11, and *ante*, p. 97.

21.

Order of Dismissal.

In the [county of . Petty sessional division of].
 Before the court of summary jurisdiction sitting at .
 The day of one thousand hundred and .
 Information [or complaint] having been laid [or made] by
 that A. B., hereinafter called the defendant, on the day of
 at in the aforesaid, did :

This court having heard and determined the said information [or
 complaint] doth hereby dismiss the same :

[If costs are ordered, add :—

And it is ordered that the informant pay to the defendant the sum
 of for costs [by instalments of for every days, the
 first instalment to be paid] forthwith [or on the day of]:

*, Sed cf. *ante*,
 p. 118, where
 costs payable
 by informant.

*And in default of payment it is ordered that the sums due be
 levied by distress and sale of the informant's [or complainant's]
 goods, and in default of sufficient distress that the informant [or
 complainant] be imprisoned in his Majesty's prison at for
 the space of , unless the said sums [and all costs and charges
 of the [said distress and] commitment, and of his conveyance to
 the said prison] be sooner paid.]

†J. P.,

Justice of the peace for the [county] aforesaid.

(L.S.)

† Cf. Form 11, and *ante*, p. 97.

22.

*Suggested Order under Probation of Offenders Act, 1907, dismissing the
 information or discharging the offender on Probation.*

In the [county of . Petty sessional division of].
 Before the court of summary jurisdiction sitting at .
 The day of one thousand nine hundred and .
 Whereas, on information laid by C. D. on the day of
 at in the aforesaid, A. B., hereinafter called the offender,*
 is this day charged with an offence punishable by the said court,
 that is to say, that the offender on the day of in
 did [here state the offence] contrary to the form of the statute in such
 case made and provided :

And the court thinks that the said charge is proved, but is of
 opinion, having regard to the† of the offender [or the
 trivial nature of the offence or the extenuating circumstances
 under which the offence was committed, as the case may be] that
 it is inexpedient to inflict any (or any other than a nominal)
 punishment [or that it is expedient to release the offender on proba-
 tion pursuant to the Probation of Offenders Act, 1907].

The court without proceeding to conviction doth hereby dismiss
 the said information, or

[Order that the offender be discharged conditionally on his
 entering forthwith into a recognizance in the sum of £ with

one surety in the sum of £ to be of good behaviour and to appear before the court of summary jurisdiction for the for conviction and sentence when called on at any time within the period of ‡ from the date hereof.

And the court, having regard to the particular circumstances of the case, further orders that the said recognizances shall contain a condition that during the period above specified the offender shall abstain from intoxicating liquor, the said offence being that of drunkenness (*or* having been committed under the influence of drink), and shall §

If a "probation order" is made, *add*:

And the court also orders that the said recognisance shall contain a further condition that during the period above specified the offender shall be under the supervision of *E. F.* a ¶ probation officer duly appointed for under the provisions of the said Act].

And the court doth further order that the defendant pay to the informant £ || for damages for injury (*or* compensation for loss) and £ for costs [by instalments of for every days the first instalment to be paid] forthwith [*or* on the day of].

And in default of payment it is ordered that the said sums be levied by distress and sale of the defendant's goods, and in default of sufficient distress that the defendant be imprisoned in his Majesty's prison at for the space of unless the said sums [and all costs and charges of the [said distress and] commitment and of his conveyance to the said prison] be sooner paid.

Two of his Majesty's justices of the peace for .

* *Add* "a person under the age of sixteen years" if the fact be so.

† "Character, antecedents, age, health *or* mental condition," as the case may be.

‡ Insert the period not exceeding three years.

§ Further conditions may be added for (1) prohibiting the offender from associating with thieves, &c., (2) generally for securing that the offender shall lead an honest and industrious life; cf. 7 Edw. 7, c. 17, s. 2 (ii.).

¶ Insert "children's" if the offender be under sixteen.

|| Not exceeding £10 unless the particular statute fixes a higher limit. As to making an order for payment on the parent or guardian, see Children Act, 1908, s. 99.

23.

Certificate of Dismissal.

In the [county of . Petty sessional division of].

I [*or* we] hereby certify that a charge made against for that he on the day of at in the aforesaid,

did was this day heard and determined by the court of
summary jurisdiction sitting at and dismissed.

Dated the day of one thousand hundred
and .

J. P.,

Justice of the peace for the [county] aforesaid.

(L.S.)

24.

Warrant of Distress (for Penalty, &c.).

In the [county of . Petty sessional division of].

To each and all of the constables of .

A. B., hereinafter called the defendant, was on the day of
convicted before the court of summary jurisdiction sitting at
for that he on the day of at in the
aforesaid, did :

And it was adjudged that the defendant for the said offence
should be imprisoned [or forfeit and pay the sum of], and
should also pay the sum of [for compensation and] for
costs [by instalments of for every days, the first instal-
ment to be paid] forthwith [or on the day of], and that
in default the said sum [or sums] should be levied by distress.

And default having been made in payment:

You are hereby commanded to forthwith make distress of the
goods of the defendant (except the wearing apparel and bedding of
him and his family, and, to the value of five pounds, the tools and
implements of his trade); and if within the space of [five] clear days
next after the making of such distress, unless he consents in writ-
ing to an earlier sale, the sum stated at the foot of this warrant,
together with the reasonable costs and charges of the making and
keeping of the said distress, be not paid, then to sell the said goods,
and pay the money arising therefrom to the clerk of that court, and
if no such distress can be found, to certify the same to that court.

Dated the day of one thousand hundred
and .

J. P.,

Justice of the peace for the [county] aforesaid.

(L.S.)

	£	s.	d.
Amount adjudged			
Paid			
Remaining due			
Costs of issuing this warrant			
Total amount to be levied			

25.

*Warrant of Distress on an Order for Money (not a Civil Debt),
or for Costs, &c.*

In the [county of . Petty sessional division of].

To each and all of the constables of .

Between , complainant, and , defendant.

On the day of it was ordered by the court of summary jurisdiction sitting at that the should pay to the [the sum of for , and] the sum of for costs [by instalments of for every days, the first instalment to be paid] forthwith [or on the day of], and that in default the said sums should be levied by distress:

And default having been made in payment:

You are hereby commanded to forthwith make distress of the goods of the defendant [or complainant] (except the wearing apparel and bedding of him and his family, and,* to the value of five pounds, the tools and implements of his trade); and if within the space of [five] clear days next after the making of such distress, unless he consents in writing to an earlier sale, the sum stated at the foot of this warrant, together with the reasonable costs and charges of the making and keeping of the said distress, be not paid, then to sell the said goods, and pay the money arising therefrom to the clerk of that court, and if no such distress can be found, to certify the same to that court.

Dated the day of one thousand hundred and .

J. P.,

Justice of the peace for the [county] aforesaid.

(L.S.)

	£	s.	d.
Amount adjudged			
Paid			
Remaining due			
Costs of issuing this warrant			
Total amount to be levied			

* *Quere*, see *Boyd v. Bilham*, ante, p. 108.

26.

Warrant of Distress for Sum due under Recognizance.

In the [county of . Petty sessional division of].

To each and all of the constables of .

A. B. was by his recognizance entered into the day of bound in the sum of .

And the condition of the said recognizance having been broken, it was on the day of adjudged by the court of summary jurisdiction sitting at that the said recognizance be

forfeited, and that he do pay the said sum of _____, and also do pay the further sum of _____ for costs [by instalments of _____ for every _____ days, the first instalment to be paid] forthwith [or on the _____ day of _____]:

And default having been made in payment:

You are hereby commanded to forthwith make distress of the goods of the said _____ (except the wearing apparel and bedding of him and his family, and, to the value of five pounds, the tools and implements of his trade); and if within the space of [five] clear days next after the making of such distress, unless he consents in writing to an earlier sale, the sum stated at the foot of this warrant, together with the reasonable costs and charges of the making and keeping of the said distress, be not paid, then to sell the said goods, and pay the money arising therefrom to the clerk of that court, and if no such distress can be found, to certify the same to that court.

Dated the _____ day of _____ one thousand _____ hundred and _____.

J. P.,
Justice of the peace for the [county] aforesaid.

(L.S.)

	£	s	d.
Amount due under recognizance			
Paid			
Remaining due			
Cost of issuing this warrant			
Total amount to be levied			

27.

Return of insufficient Distress to be Indorsed on Warrant.

I, _____, constable of the _____ of _____, hereby certify that, by virtue of the within-written warrant, I have made diligent search for the goods of the within-named A. B., and that I can find no sufficient goods of him whereon the sums within mentioned can be levied.

Dated the _____ day of _____ one thousand _____ hundred and _____.

X. Y.

28.

Account of Charges incurred on a Warrant of Distress.

In the matter of an information [or a complaint] by _____ against _____.
I _____ of _____ the constable charged with the execution of the warrant of distress upon the goods of _____ dated the _____ day of _____.

hereby declare that the following is a true account of the costs and charges incurred in respect of the execution of the said warrant:—

Dated the day of one thousand hundred
and

£ s. d.

Total

A. B.

29.

Commitment in lieu of Distress.

In the [county of . Petty sessional division of].

To each and all of the constables of and to the governor of his Majesty's prison at .

A. B., hereinafter called the defendant, was this day [or on the day of], before the court of summary jurisdiction sitting at , convicted [or ordered] [reciting conviction or order:]

And default having been made in payment;

And it appearing to this court that the defendant has no [sufficient] goods whereon to levy distress [or that the levy of the distress will be more injurious to the defendant and his family than imprisonment]:

It is ordered that the defendant be imprisoned in his Majesty's prison aforesaid and there kept [to hard labour] for the space of , unless the said sum [and all costs and charges of his commitment and of his conveyance to the said prison] be sooner paid:

And you the said constables are hereby commanded to take the defendant, and convey him to the said prison, and there deliver him to the governor thereof, together with this warrant; and you the governor of the said prison to receive the defendant into your custody, and keep him [to hard labour] for the space of , unless the said sum [and all costs and charges of his commitment and of his conveyance to the said prison] be sooner paid.

Dated the day of one thousand hundred
and

J. P.,

Justice of the peace for the [county] aforesaid.

(L.S.)

30.

Commitment pending Return to Warrant of Distress.

In the [county of . Petty sessional division of].

To each and all of the constables of , and to the governor of his Majesty's prison at .

A. B., hereinafter called the defendant, was this day [or on the day of] before the court of summary jurisdiction sitting at convicted [or ordered] [reciting conviction or order]:

And default having been made in payment, a warrant of distress was issued, but no return has been made thereto:

And the defendant not having given sufficient security to the satisfaction of this court for his appearance at the time and place appointed for the return of the warrant of distress:

You the said constables are hereby ordered to convey the defendant to the said prison, and there deliver him to the governor thereof, together with this warrant; and you the governor of the said prison to receive the defendant into your custody, and keep him until the day of , and on that day to convey him before the court of summary jurisdiction aforesaid [*or sitting at*] at the hour of in the noon [*unless he previously enters into a recognizance in the sum of with surety in the sum of [each] conditioned for his appearance on that day, or pays the sum of being the amount payable under such warrant*].

Dated the day of one thousand hundred and .

J. P.,
Justice of the peace for the [*county*] aforesaid.

(L.S.)

31.

Commitment in Default of Distress.

In the [*county of. Petty sessional division of*].

To each and all of the constables of , and to the governor of his Majesty's prison at .

A. B., hereinafter called the , was this day [*or on the* day of] before the court of summary jurisdiction sitting at convicted [*or ordered*] [*reciting conviction or order*]:

And default having been made in payment, the constables aforesaid were authorised by warrant dated the day of , to levy the sum of by distress:

And it now appearing that no sufficient distress whereon to levy the said sum could be found [and that a balance of is due under such adjudication or order]:

You the said constables are hereby commanded to convey the defendant [*or complainant*] to the said prison, and there deliver him to the governor thereof, together with this warrant; and you the governor of the said prison to receive the defendant [*or complainant*] into your custody, and keep him [*to hard labour*] for the space of [in lieu of the term originally imposed] unless the said sum [and all the costs and charges of the said distress, amounting to the further sum of [and all the costs and charges of his commitment and of his conveyance to the said prison] be sooner paid].

Dated the day of one thousand hundred and .

J. P.,
Justice of the peace for the [*county*] aforesaid.

(L.S.)

32.

Commitment for a Penalty without Distress.

In the [county of . Petty sessional division of].

To each and all of the constables of , and to the governor of his Majesty's prison at .

A. B., hereinafter called the defendant, was this day [or on the day of], before the court of summary jurisdiction sitting at , convicted [or ordered] [*reciting conviction or order*].

And default having been made in payment:

You the said constables are hereby commanded to convey the defendant to the said prison, and there deliver him to the governor thereof, together with this warrant; and you the governor of the said prison to receive the defendant into your custody and keep him [*to hard labour*] for the space of , unless the said sums [and the costs and charges of his commitment and of his conveyance to the said prison] be sooner paid.

Dated the day of one thousand hundred and .

J. P.,

Justice of the peace for the [county] aforesaid. (L.S.)

33.

Commitment on Sentence of Imprisonment only.

In the [county of . Petty sessional division of].

To each and all of the constables of and to the governor of his Majesty's prison at .

A. B., hereinafter called the defendant, has been this day, before the court of summary jurisdiction sitting at , convicted [*here recite conviction and adjudication*].

You the said constables are hereby commanded to convey the defendant to the said prison, and there deliver him to the governor thereof, together with this warrant; and you the governor of the said prison to receive the defendant into your custody, and keep him [*to hard labour*] for the space of .

Dated the day of one thousand hundred and .

J. P.,

Justice of the peace for the [county] aforesaid. (L.S.)

34.

Commitment on an Order in the First Instance.

In the [county of . Petty sessional division of].

To each and all of the constables of , and to the governor of his Majesty's prison at .

A. B., hereinafter called the defendant, was, on the day of 18 , before the court of summary jurisdiction sitting at ordered [*here recite order*].

And default having been made in payment [or obeying the said order]:

Dated the day of one thousand hundred
and .

Justice of the peace for the [county] aforesaid. (L.S.)

Endorsement on Process.

Dated the day of one thousand hundred
and .

Justice of the peace for the [county] aforesaid.

Recognizance.

We, the undersigned, severally acknowledge ourselves to owe to our sovereign lord the King the several sums following, namely
of as principal, the sum of and of
and of as suret the sum of each, to be levied
on our several goods, lands, and tenements if the said principal fail
in the condition herein endorsed.

L. M.

N. O.

thousa

Taken [orally] before me the day of one thousand
hundred and .

Justice of the peace for the [county]
aforesaid, or (L.S.)

Clerk of the court of summary jurisdiction for
the petty sessional division of _____, or
Superintendent of _____ police.

Condition.

The condition of the above recognizance is such that if the above-bounden principal shall appear before the court of summary jurisdiction sitting at on day, the day of , at the hour of in the noon, to answer to the charge made against him by and to be dealt with according to law.

[or shall appear before the court of summary jurisdiction sitting at for sentence when called upon].

[or shall keep the peace and be of good behaviour towards his Majesty and all his liege people, and especially towards for the term of now next ensuing].

[or shall].

Then the said recognizances shall be void, but otherwise shall remain in full force.

37.

Endorsement of Forfeiture of Recognizance.

In the [county of . Petty sessional division of].

Before the court of summary jurisdiction sitting at .

The within-mentioned principal not having complied with the said condition, this court adjudges the within-written recognizances to be forfeited.

Dated the day of one thousand hundred and .

J. P.,

Justice of the peace for the [county] aforesaid. (L.S.)

38.

Endorsement mitigating Forfeiture, &c.

In the [county of . Petty sessional division of].

Before the court of summary jurisdiction sitting at .

The within-mentioned recognizance having been adjudged to be forfeited, and A. B. having applied to this court to cancel [or mitigate] such forfeiture, and having given security to the satisfaction of this court for the future performance of the condition of the said recognizance, and having paid [or given security for payment of] the costs incurred in respect of the forfeiture thereof [or insert such other condition as the court may think just]:

Therefore the said forfeiture is hereby cancelled [or mitigated to the sum of].

Dated the day of one thousand hundred and .

J. P.,

Justice of the peace for the [county] aforesaid. (L.S.)

39.

Notice of Recognizance to be given to the Defendant and his Sureties.

Take notice that you A. B. are bound in the sum of as principal, and you L. M. [and N. O.] in the sum of as

sureties, that you, the said principal, appear before the court of summary jurisdiction sitting at on day, the day of , at the hour of in the noon to answer to the charge made against you by and to be dealt with according to law [*or as the case may be*], and unless you, the said principal, appear accordingly the said sums will forthwith be levied on you severally.

Dated the day of one thousand hundred and .

J. P.,

Justice of the peace for the [*county*] aforesaid. (L.S.)

40.

Security for Penalty, &c.

In the [*county* of . Petty sessional division of].

A. B., hereinafter called the defendant, was this day [*or on the day of*] by a certain conviction [*or order*] before the court of summary jurisdiction sitting at adjudged to pay the sum of [by instalments of for every days, the first instalment to be paid] forthwith [*or on the day of*] and to give security for the due payment thereof:

Now, therefore, the defendant and his sureties *C. D.*, of and *E. F.*, of , hereby undertake that the defendant will pay the sum adjudged at the time and in the manner thereby directed and hereby severally acknowledge themselves severally bound to forfeit and pay to [the clerk of the court] the sum of in case the defendant fails to perform this undertaking.

(Signed where not taken orally) *A. B.*, Defendant.
C. D., } Sureties.
E. F., }

Taken [orally] before me the day of one thousand hundred and .

J. P.,

Justice of the peace for the [*county*] aforesaid.

41.

Security to perform Condition of Forfeited Recognizance.

In the [*county* of . Petty sessional division of].

A. B., hereinafter called the defendant, was by his recognizance entered into the day of bound in the sum of :

And the said recognizance has been adjudged to be forfeited, but the said defendant has applied to the court of summary jurisdiction sitting at to cancel [*or mitigate*] the forfeiture:

Now, therefore, the defendant and his sureties *C. D.* of and *E. F.* of hereby undertake that the condition of the said recognizance shall be duly performed [and that the said shall on or before the day of pay the sum of for costs incurred in respect of the said forfeiture]; and hereby severally acknowledge themselves severally bound to forfeit and pay to [the

clerk of the court] the sum of _____ in case the said defendant fails to perform the condition of the said recognizance.

(Signed where not taken orally) A. B.
C. D.
E. F.

Taken [orally] before me the day of one thousand
hundred and .

J. P.,

Justice of the peace for the [county] aforesaid.

42.

Notice to Principal of Forfeiture of Security.

In the [county of . Petty sessional division of].

To *A. B.*, of .

Take notice that you have forfeited the sum of _____, for which you were bound by your undertaking entered into the _____ day of _____, and that unless you pay that sum to _____ at _____ on or before the _____ day of _____ a warrant of distress will be issued for the recovery thereof.

Dated the day of one thousand hundred
and

Clerk of the court of summary jurisdiction
for the [county] aforesaid.

43.

Order varying Order for Sureties.

In the [county of . Petty sessional division of].

Before the court of summary jurisdiction sitting at

A. B., hereinafter called the defendant, has been under a warrant of commitment dated the _____ day of _____, issued by this court [or the court of summary jurisdiction sitting at _____] committed to prison for default in finding suret _____ in the sum of _____.

Upon further consideration it is now ordered that the amount in which the surety of the defendant are to be bound be reduced to [or that the obligation of the defendant to find suret be dispensed with].

Dated the day of one thousand hundred
and ,

J. P.,

Justice of the peace for the [county] aforesaid.

(L.S.)

44.

Order to bring up a Prisoner.

In the [county of _____, Petty sessional division of _____].

To the governor of his Majesty's prison at

You are hereby ordered to bring *A. B.*, now in your custody, before the court of summary jurisdiction sitting at _____ on _____

day of _____, at the hour of _____ in the _____ noon, that he may enter into a recognizance with _____ suret _____ conditioned to keep the peace [or appear and try an appeal from the conviction [or order] of the court of summary jurisdiction sitting at _____ dated the _____ day of _____, or apply for re-examination], and may be thereupon released from your custody.

Dated the _____ day of _____ one thousand _____ hundred and _____.

J. P.,

Justice of the peace for the [county] aforesaid.

45.

See now
Children Act,
1908 (8
Edw. 7, c. 67,
s. 98).

Notice to Parent or Guardian of Child charged with an Indictable Offence.

In the [county of _____]. Petty sessional division of _____].

To _____ of _____.

Forms,
pp. 1140, 1141.

A. B. has been charged with _____, and has been remanded until the sitting of the court of summary jurisdiction sitting at _____ on the _____ day of _____, at the hour of _____, and it has been alleged that you are his parent [or guardian].

If you desire that he be tried by a jury, and object to his case being dealt with summarily, you must attend before that court on that day and hour.

Dated the _____ day of _____ one thousand _____ hundred and _____.

J. P.,

Justice of the peace for the [county] aforesaid.

46.

Declaration of Service.

I _____ of _____ hereby solemnly declare that I did _____ on the _____ day of _____, serve _____ of _____ with the [warrant, summons, notice, process, _____] now shown to me and marked A, by delivering a true copy thereof to him [or by leaving a true copy thereof with _____ for him at _____, being his last [or most usual] place of abode].

Declared before me the _____ day of _____ one thousand _____ hundred and _____.

J. P.,

Justice of the peace for the [county] aforesaid.
[Or other description.]

47.

Declaration as to Handwriting and Seal.

I _____ of _____ hereby solemnly declare that the signature to the document now produced and shown to me, and marked A,

is in the handwriting of of [and that the seal on the said document is the seal of].

Declared before me the day of one thousand hundred and

J. P.,

Justice of the peace for the [county] aforesaid.

[Or other description.]

48.

Certificate of Costs of Prosecution of Indictable Offence dealt with summarily.

In the [county of . Petty sessional division of].

See **Form** given under "Regulations" of June, 1904, *post*, p. 1128.

49.

Certificate of Clerk of the Peace that the Costs of an Appeal have not been paid.

I hereby certify that at a court of [adjourned] general quarter sessions of the peace holden at , in and for the of , on the day of , an appeal by against a conviction [or order] of the court of summary jurisdiction sitting at was heard and determined, and that it was thereupon ordered that the said conviction [or order] should be confirmed [or quashed], and that the appellant [or respondent] should, on or before the day of , pay to me the sum of for the respondent's [or appellant's] costs of the said appeal.

And I further certify that the said sum for costs has not been paid.

Dated the day of one thousand hundred and .

A. B.,

Clerk of the peace for the [county] aforesaid.

50.

Certificate of Ability of Surety to pay.

In the [county of . Petty sessional division of].

To the governor of prison.

Whereas *A. B.* is now in your custody under a warrant of a court of summary jurisdiction dated the day of 19 . I hereby certify that the bearer of this, *C. D.* of in the [county] of [description] (whose signature is in the margin hereof) has offered himself as surety for the above-named prisoner and has satisfied me [or the court of summary jurisdiction sitting at on] of his ability to pay the sum of £ in the event of the recognizance [for the appearance of the said *A. B.* before the court of] referred to in the said warrant becoming forfeited.

Clerk of the court of summary jurisdiction sitting at . day of 19 .

Signature of surety.

FORMS APPLICABLE TO PROCEEDINGS FOR THE RECOVERY OF A
CIVIL DEBT.

In the [county of _____], Petty sessional division of _____],
Between A. B. _____ plaintiff,
Address _____
Description _____ and _____

C. D.

defendant.

Address

Description

To of

You are hereby required to attend before the court of summary jurisdiction sitting at on day the day of , at the hour of in the noon, to give evidence in the above cause on behalf of the [plaintiff or defendant].

Dated the day of .

J. P.,

Justice of the peace for the [county] aforesaid.

(L.S.)

4.

Judgment.

In the [county of . Petty sessional division of].

Before the court of summary jurisdiction sitting at .

The day of one thousand hundred and .

Between *A. B.* plaintiff,

Address

Description

and

C. D.

defendant.

Address

Description

It is adjudged that the pay the [the sum of for debt [or damages] and] the sum of for costs [by instalments of for every days, the first instalment to be paid] forthwith [or on the day of]; and in default of payment that the sum due thereunder be levied by distress and sale of the goods [or where security is accepted and that the be at liberty to give to the satisfaction of this court [or of security in the sum of with suret in the sum of [each] for payment of the sum adjudged].

J. P.,

Justice of the peace for the [county] aforesaid.

(L.S.)

5.

Judgment Summons.

In the [county of . Petty sessional division of].

The day of one thousand hundred and .

Between *A. B.* plaintiff,

Address

Description

and

C. D.

defendant.

Address

Description

To the above-named defendant [or plaintiff].

The plaintiff [or defendant] obtained a judgment against you the

the said sum, and the defendant [*or* plaintiff] having been duly summoned to show cause why he shall not be committed to prison for such default:

And it being now proved that the defendant [*or* plaintiff] now has or has had since the date of the judgment the means to pay the sum then due and payable in pursuance of the judgment, and has refused [*or* neglected *or* now refuses or neglects] to pay the same and has shown no cause why he should not be committed to prison:

It is ordered that the defendant [*or* plaintiff] be committed to prison for days, unless he sooner pay the said sum and costs stated below as that on the payment of which he is to be discharged.

And you the said constables are hereby required to take the defendant [*or* plaintiff] and to deliver him to the governor of his Majesty's prison at , and you the said governor to receive the defendant [*or* plaintiff] and there keep him for days from the arrest under this order, or until he is sooner discharged by due course of law.

Dated the day of one thousand hundred and .

J. P.,
Justice of the peace for the [*county*] aforesaid.

(*L.S.*)

£ s. d.

Total sum payable at the time of hearing of the
judgment summons
Cost of hearing of summons, and of this order

Total sum on payment of which the prisoner will
be discharged

7.

Certificate for Discharge from Custody.

In the [*county* of . Petty sessional division of].

Between *A. B.*, plaintiff, and *C. D.*, defendant.

To the governor of his Majesty's prison at .

I hereby certify that the defendant [*or* plaintiff], who was committed to your custody by an order of commitment dated the day of , has paid the sum mentioned in the said order as that upon payment of which he would be discharged, and may in respect of the said order be forthwith discharged.

Dated the day of one thousand hundred and .

A. B.,
Clerk of the court of summary jurisdiction at .

8.

Distress Warrant.

In the [county of . Petty sessional division of].

Between A. B. plaintiff,

Address

Description

and

C. D.

defendant.

Address

Description

To each and all the constables of

On the day of , it was ordered by the court of summary jurisdiction sitting at that the defendant [or plaintiff] should pay to the plaintiff [or defendant] for debt [or damages] and for costs, forthwith [or on the day of], and in default the sums due thereunder should be levied by distress and sale of the defendant's goods.

And default having been made, you are hereby commanded forthwith to make distress of the goods of the said defendant [or plaintiff] (except the wearing apparel and bedding of him and his family, and,* to the value of five pounds, the tools and implements of his trade), and if within the space of five clear days next after the making of such distress the sum stated at the foot of this warrant to be levied, together with the reasonable charges of the making and keeping of the said distress, be not paid, then to sell the said goods by you distrained and pay the money arising thereby to the clerk of that court, and if no such distress can be found to certify the same to that court.

Dated the day of one thousand hundred and

J. P.,

Justice of the peace for the [county] aforesaid.

(L.S.)

	£	s.	d.
Amount adjudged			
Paid			
Remaining due			
Costs of issuing this warrant			
Total amount to be levied			

* Cf. *Boyd v. Bilham*, ante, pp. 109, 651.

9.

Undertaking to Pay Civil Debt.

In the [county of . Petty sessional division of].

Between A. B. plaintiff,

Address

Description

and

C. D.

defendant.

Address

Description

It was on the day of ordered by the court of summary jurisdiction sitting at , that the plaintiff recover against the defendant the sum of for debt [or damages] and for costs, and that the defendant pay the same to the plaintiff [by instalments of for every days, the first instalment to be paid] forthwith [or on the day of], and that the defendant should be at liberty to give to the satisfaction of the court [or as in judgment] security in sum of with suret in the sum of [each] for the payment of the said sums.

Now, therefore, the defendant, and *C. D.* of and *E. F.* of as suret hereby undertake that the defendant will pay the said sum thereby adjudged.

And the said defendant and the said suret hereby severally acknowledge themselves bound to forfeit and pay to the sum of _____ in case the defendant fails to perform this undertaking.

(Signed if not taken orally) A. B. Defendant.

$\left. \begin{array}{l} C. D. \\ E. F. \end{array} \right\} \text{ Sureties.}$

Taken [orally] before me the day of one thousand
hundred and .

J. P.,

Justice of the peace for the [county] aforesaid.

PART III.

GENERAL FORMS.

[*I.e.*, Skeleton Forms of Register, Account of Fines and Fees, Remitted Fee Book, and Return of Exchequer Fines, &c.]

COSTS AND COMPENSATION.

REGULATIONS OF JUNE 14, 1904, AND 28 NOVEMBER, 1908.

1. *Witnesses giving Professional Evidence.*

There may be allowed to practising members of the legal and medical professions, for attending to give professional evidence, but not otherwise, allowance not exceeding the sums stated in the following scale:—

For attending to give evidence in the town or place where the witness resides or practises—

if the witness attends to give evidence in one case only, not more than one guinea per diem ;

if the witness gives evidence on the same day in two or more separate and distinct cases, not more than two guineas ;

For attending to give evidence elsewhere than in any town or place where the witness resides or practises, whether in one or more cases, not more than two guineas per diem.

In this Regulation “town” means Municipal Borough or Urban District ; and “place” means within a radius of three miles from the Court at which the witness attends to give evidence.

No allowance may be given under this Regulation to the solicitor for the prosecution, except that, if such solicitor gives professional evidence which, in the opinion of the Court, was necessary and saved the attendance of another witness, a fee of 6s. 8d. may be allowed.

2. *Expert Witnesses and Interpreters.*

There may be allowed (a) to expert witnesses such allowances for attending to give expert evidence as the Court may consider reasonable, including, where necessary, an allowance for qualifying to give evidence, and (b) to persons employed as interpreters, such allowances as the Court may consider reasonable.

3. *Police Officers.*

There may be allowed to Police Officers :—

When attending as prosecutors or witnesses at Courts situate within the area of their own Police Authority, no allowance, other than travelling allowances as provided in Regulation 8.

When attending as prosecutors or witnesses at Courts situate outside the area of their own Police Authority—

(a) In the case of Constables and Sergeants, a sum not exceeding—

For the day 4s.

For the night 4s.

(b) In the case of Inspectors, a sum not exceeding—

For the day 5s.

For the night 5s.

(c) In the case of Superintendents and Chief Constables, a sum not exceeding—

For the day 7s.

For the night 5s.

For the purposes of this Regulation, any Court at which cases arising in the area of any Police Authority or part thereof are ordinarily heard or tried, shall be deemed, so far as regards such cases, to be situate within that area.

4. *Prison Warders.*

There may be allowed to prison warders attending as prosecutors or witnesses or in charge of a prisoner produced to give evidence, a sum equal to that allowed them by the Regulations of the Prison Department, viz. :—

	Day and night.	Day only.	
Chief warders	8s.	Breakfast . 1s.	} 4s. 6d.
		Dinner . 2s. 6d.	
		Supper . 1s.	
Principal warders	6s. 6d.	Same as above.	
Warders and assistant warders	6s.	Breakfast . 1s.	} 4s.
		Dinner . 2s.	
		Supper . 1s.	

For a prisoner so produced in the custody of warders, such sum for subsistence as the warders have been authorised to spend, and has been actually expended, on his behalf.

5. *Ordinary Witnesses.*

There may be allowed to witnesses, other than those hereinbefore mentioned, allowances not exceeding 7s. for the day and 5s. for the night :

Provided that the day allowance to the under-mentioned classes of witnesses, *when they are not necessarily detained from home for a night*, shall not, except for special reasons allowed by the Court, exceed the following rates :

(1) For children the allowance shall not exceed 1s. per diem ;

- (2) For persons of the pauper or vagrant class the allowance shall not exceed 1s. per diem ;
- (3) For other persons, *who do not lose wages, earnings, or income by attendance*, the allowance shall not exceed 2s. 6d. per diem ;
- (4) For persons in the service of an employer *who lose wages by attendance*, the allowance shall not exceed the following rates, except on the production of a certificate from the employer showing that the wages so lost are in excess of such rates :—

	s.	d.
For agricultural labourers, unskilled labourers, and others similarly employed	3	6 per diem.
For artisans, mechanics, and others similarly employed	5	0 „
For clerks, shop assistants, and others similarly employed	5	0 „

Provided also that no night allowance, within the above-mentioned limit of 5s., shall exceed the expense reasonably incurred by the witness.

6. *Seamen.*

Where seamen have been detained on shore for the purpose of giving evidence in a criminal prosecution, the amount actually and reasonably incurred for their maintenance during their detention may be allowed in addition to any allowances made under the foregoing rule.

7. *General Regulation.*

No full day allowance under Regulations 1, 3, and 5 shall be paid unless the witness is necessarily detained away from his home, or place of business or employment, for at least four hours for the purpose of giving evidence.

If the time during which the witness is necessarily detained away from his home, or place of business or employment, be less than four hours, he shall receive not more than one-half of the allowance which he would have received had he been detained for the full day :

Provided that this regulation shall not apply (1) where the full day allowance is not more than 1s. ; and (2) where the Court is satisfied that a witness, though absent for less than four hours, necessarily loses, in consequence of his attendance, his whole day's wages.

No night allowance under Regulations 3, 4, and 5 shall be

paid unless the witness in order to give evidence is necessarily detained away from home for the night.

There may be allowed to any prosecutor or other person who, in the opinion of the Court, necessarily attends for the purpose of the prosecution otherwise than as a witness, the same allowance, including travelling allowance as to an ordinary witness.

8. *Travelling Allowances.*

For attending Court from a distance of over two miles there may be allowed:—

- (1) To witnesses travelling by railway or other public conveyance, the fare actually paid. Railway fares, except for special reasons allowed by the Court, shall be 3rd class; and if return tickets are available, only return rates shall be allowed. In the case of police witnesses, the reduced rates under the Cheap Trains Act, 1883, shall not be exceeded, except where the single fare is less than 1s., or for special reasons allowed by the Court.
- (2) Where no railway or other public conveyance is available, and one or more witnesses necessarily travel by a hired vehicle, the sum actually paid for the hire of such vehicle, not exceeding 1s. a mile each way: provided that, where two or more witnesses attend from the same place, the total allowance shall not exceed 1s. a mile each way, unless the Court is satisfied that it was reasonably necessary to hire more than one vehicle.
- (3) To each witness travelling on foot or by a private conveyance, where no railway or other public conveyance is available, a sum not to exceed 2d. a mile each way.

Allowances made under (2) and (3) shall be made separately as mileage.

For the conveyance of witnesses suffering from serious illness, or for the carriage of heavy exhibits, sums in excess of the above rates may be allowed if the Court is satisfied that the expense incurred was reasonably necessary.

Warders in charge of prisoners produced to give evidence may be allowed the cost of travelling by such means of conveyance as the Governor of the Prison may have directed.

REGULATIONS OF NOVEMBER 28, 1908.

1. Forms A, B, C, and D in the Schedule hereto, or forms to the like effect, with such variations as circumstances may require, shall be used by Examining Justices and Courts of Summary Jurisdiction for the purposes of Section 3 of this Act.

2. The profession, trade or occupation of each prosecutor, witness or other person, or the fact that he is without employment or occupation, must be stated in each of the forms; and the reason for which each sum is allowed must be stated in the certificates in Forms B and D.

3. The Justices' Clerk, as the proper officer of the Court for the purposes of Section 3, shall pay any allowance included in any order in Form A or Form C to the person named in the order or to any person duly authorized to act on his behalf and shall cause the person to whom the payment is made to acknowledge the receipt of the same by affixing his signature in the right-hand margin of the order or to a memorandum which must show the sum paid and must be attached to the order.

4. On presentation of the order in Form A or Form C with the receipts of the persons to whom the allowances have been paid, the amount thereof shall be re-imbursed to the Justices' Clerk by the Treasurer of the County or County Borough named in the order:

Provided that such re-imbusement, in lieu of being made on the presentation of each order, may be made at such intervals as the Council of the County or County Borough may direct so that the times fixed be such that the amount to be re-imbursed may be charged in the Justices' Clerk's Account of Fines and Fees.

5. For fees payable by the prosecutor to the Justices' Clerk or the Clerk of the Peace which may be allowed by the Examining Justices or Court of Summary Jurisdiction as part of the costs payable out of local funds, it shall not be necessary to use Forms B or D, but such fees may be entered in a book or schedule and certified in any convenient form.

6. The term "personal expenses" means expenses allowed in pursuance of Regulations 1, 3, 4, and 5 of the Regulations made by the Secretary of State on the 14th day of June, 1904.

FORM A.

Order of Examining Justices for the Payment of Travelling and Personal Expenses in a case dealt with under the Indictable Offences Act, 1848.

In the [county of . Petty sessional division of].
 A. B. having been examined before on a charge of
 and committed for trial at Assizes [or at Quarter Sessions]
 [or which charge has been dismissed]; it is hereby ordered that
 the undermentioned persons shall be paid, for their travelling and
 personal expenses in respect of their attendance to give evidence on

the said charge, allowances out of the funds of the [county] of
 , as follows:—

£ s. d.

To C. D. [state profession, trade or occupation] the prose-
 cutor, residing at , for his attendance here
 half day day and night . . .
 For travelling: mileage miles at per mile;
 fares
 To E. F. [state profession, trade or occupation] a witness,
 residing at , for his attendance here half day
 day and night . . .
 For travelling: mileage miles at per mile;
 fares
 Dated this day of , one thousand nine hundred
 and

J. P.

Justice of the Peace for the [county] aforesaid.

N.B.—When the several sums specified in this order have been
 paid by the Justices' Clerk to the persons named, the order with
 their receipts should be forwarded by the Justices' Clerk in support
 of his claim for re-imbursement to the Treasurer of the County or
 County Borough out of the funds of which they are payable.

FORM B.

*Certificate of Examining Justices as to Costs of Prosecution, other than
 Travelling and Personal Expenses, in a case dealt with under the
 Indictable Offences Act, 1848.*

In the [county of . Petty sessional division of].
 A. B. having been examined before on a charge of
 and committed for trial at Assizes [or at Quarter Sessions]
 [or which charge has been dismissed]; it is hereby certified that the
 undermentioned amounts are due to the prosecutor C. D. [state
 profession, trade or occupation], residing at , for expenses
 properly incurred by him in carrying on the prosecution, viz.:—

£ s. d.

For {
 For { [State why the sum or the several sums are allowed.]
 For {

and that the undermentioned sums are due to the undermentioned
 persons for their expense, trouble, and loss of time properly in-
 curred in or incidental to attendance and giving evidence as to the
 said charge:—

£ s. d.

To E. F. [state profession, trade, or occupation]
 [state whether expert witness, interpreter, &c.] residing at
 , for [state why the sum or the several sums
 are allowed]
 To G. H. [state profession, trade, or occupation]
 [state whether expert witness, interpreter, &c.] residing at
 , for [state why the sum or the several sums
 are allowed]

It is further certified that the foregoing sums do not include any travelling or personal expenses paid to any person in pursuance of Section 3 (1) (a) of the Costs in Criminal Cases Act, 1908.

Dated this day of , one thousand nine hundred and .

J. P.

Justice of the Peace for the [county] aforesaid.

N.B.—This certificate is to be forwarded, if the person charged is committed for trial, to the Clerk of Assize or the Clerk of the Peace, with the depositions, or if the charge is dismissed, to the Clerk of the Peace before the next Court of Quarter Sessions.

FORM C.

Order of Court of Summary Jurisdiction for the Payment of Travelling and Personal Expenses in the case of an Indictable Offence dealt with summarily.

In the [county of . Petty sessional division of].

Before the Court of Summary Jurisdiction sitting at .

A. B. [an adult, young person, or child] having been charged for that he did [state substance of charge], and the above Court, having, in pursuance of its statutory jurisdiction, dealt with the case summarily, on the day of , and convicted the said *A. B.* [or dismissed the said charge]; it is hereby ordered that the under-mentioned persons shall be paid for their travelling and personal expenses in respect of their attendance to give evidence on the said charge allowances out of the funds of the [county] of , as follows:—

£ s. d.

To *C. D.* [state profession, trade or occupation] the prosecutor, residing at , for his attendance here
half day, day and night . . .

For travelling: mileage miles at per mile;
fares

To *E. F.* [state profession, trade or occupation] a witness
residing at , for his attendance here half day
day and night . . .

For travelling: mileage miles at per mile;
fares

Dated this day of , one thousand nine hundred and .

J. P.

Justice of the Peace for the [county] aforesaid.

N.B.—When the several sums specified in this Order have been paid by the Justices' Clerk to the persons named, the Order with their receipts should be forwarded by the Justices' Clerk in support of his claim for re-imbursement, to the Treasurer of the County or County Borough out of the funds of which they are payable.

FORM D.

Certificate of Court of Summary Jurisdiction as to Costs of Prosecution, other than Travelling and Personal Expenses, in the case of an Indictable Offence dealt with summarily.

In the [county of . Petty sessional division of .]

Before the Court of Summary Jurisdiction sitting at .

A. B. [an adult, young person or child] having been charged for that he did [state substance of offence], and the above Court, having, in pursuance of its statutory jurisdiction, dealt with the case summarily, on the . day of ., and convicted the said A. B. [or dismissed the said charge]; it is hereby certified that the undermentioned amounts are due to the prosecutor C. D. [state profession, trade or occupation] residing at . for expenses properly incurred by him in carrying on the prosecution, viz:—

£ s. d.

For }
For } [State why the sums or the several sums are allowed.]
For }

and that the undermentioned sums are due to the undermentioned persons for their expense, trouble, and loss of time properly incurred in or incidental to attendance and giving evidence on the said charge:—

£ s. d.

To E. F. [state profession, trade or occupation] [state whether expert witness, interpreter, &c.] residing at . for [state why the sum or several sums are allowed] .

To G. H. [state profession, trade or occupation] [state whether expert witness, interpreter, &c.] residing at . for [state why the sum or several sums are allowed] .

It is further certified that the foregoing sums do not include any travelling or personal expenses paid to any person in pursuance of Section 3 (1) (a) of the Costs in Criminal Cases Act, 1908.

Dated this . day of ., one thousand nine hundred and .

J. P.

Justice of the Peace for the [county] aforesaid.

N.B.—This certificate is to be forwarded by the Justices' Clerk to the Clerk of the Peace before the next Court of Quarter Sessions.

EMPLOYERS AND WORKMEN ACT, 1875.

RULES.

1. Short title and commencement.
2. Procedure.
3. Set-off or counterclaim.
4. Names of plaintiffs claiming upon common circumstances to be inserted in one summons.
5. Defendant may object that a plaintiff's claim should be heard separately.
6. Determination of first-named plaintiff's claim to determine the others.
7. Where summons dismissed.
8. Where claimants succeed.
9. New trial.
10. Fees.
11. Costs.
12. Forms.
13. Annulment.

SCHEDULE.

1. Order rescinding contract.
2. Order for performance of contract.
3. Undertaking by defendant to perform contract.

FEES.

RULES.

Short title
and com-
mencement.

Procedure.

1. These rules may be cited as the Employers and Workmen Rules, 1886, and shall come into operation on the first day of January, 1887.

2. The proceedings in relation to any dispute between an employer and a workman [may] be commenced under the Employers and Workmen Act, 1875, in a court of summary jurisdiction for the district in which the defendant or one of the defendants dwelt or carried on business, or was employed at the time the cause of action arose, or in which he or one of them happens to be at the time of the entry of the action, and thereupon the same proceedings shall be had, and the same forms may be used as upon a claim for a civil debt under the Summary Jurisdiction Acts; Provided that the summons shall be served four clear days at least before the hearing in manner directed by the said Summary Jurisdiction Acts, or by leaving it with an adult person at the office or place of business or employment

of the defendant or one of the defendants: Provided also that no order of commitment shall be made against an apprentice until he shall have been personally served with a judgment summons.

3. A defendant shall not, except by leave of the court of summary jurisdiction, on such terms as the court may think fit, be permitted to set up against the claims of the plaintiff any set-off or counterclaim, unless he shall have served, or caused to be served, by registered post letter or otherwise, two clear days at least before the return-day, a notice thereof directed to the plaintiff at his address as mentioned in the summons, setting forth the particulars of such set-off or counterclaim. Service of any notice by post shall, unless the contrary be proved, be deemed to have been made on the day upon which the letter would have been delivered in the ordinary course of post.

Set-off or counterclaim.

4. Where disputes between an employer and his workmen are of such a character that the liability of the employer to divers of his workmen depends upon circumstances common to a whole class of their claims, the names of all the workmen whose claims are grounded upon common circumstances may be inserted as plaintiffs in one summons. Where the number of such plaintiffs is large, the name of one plaintiff only may be inserted in the body of the summons, and in such case the names of the other plaintiffs, together with their descriptions and addresses and the amounts of their respective claims, may be indorsed on the summons or added in a schedule thereto annexed.

Names of plaintiffs claiming upon common circumstances to be inserted in one summons.

5. The employer may, at the hearing of any such summons, object that the claim of any plaintiff included in the summons ought to be separately heard and determined, either on the ground that the amount claimed is disputed, as well as the liability, or as depending on special circumstances. The name of any plaintiff, whose claim is so objected to, shall be struck out by order of the court of summary jurisdiction.

Defendant may object that a plaintiff's claim shall be heard separately.

6. When the summons comes on for hearing, the case of the plaintiff first named in the summons shall (unless the court otherwise directs) be heard and determined, and the claims of all the other plaintiffs whose names shall have been included in the summons, and not struck out as in rule 5 provided, shall abide the result of the case so determined.

Determination of first-named plaintiff's claim to determine the others.

7. If the court of summary jurisdiction dismisses the summons, no claim shall afterwards be admitted at the instance of any workman whose name was included in the summons (and was not struck out as in rule 5 provided) in respect of the claim made thereby, unless he shows to the satisfaction of the

Where summons dismissed.

court that his name was included in the summons without his consent.

Where
claimants
succeed.

8. If the court of summary jurisdiction finds in favour of the plaintiff whose case is tried, it shall make an order on all the claims of the plaintiffs included in the summons (not struck out as in rule 5 provided), and such order shall operate and take effect as if the claim of each workman, whose name may have been so included as a plaintiff in the summons and not struck out, had been separately heard and determined by the court, and an order had been made on each such claim.

New trial.

9. The court of summary jurisdiction by whom any action has been determined *ex parte* may, at the same or any subsequent court, set aside any judgment so given, and any process thereon, and may grant a new trial on such terms as the court may think fit.

Fees.

10. The fees to be paid by a person seeking the assistance of a court of summary jurisdiction shall be those contained in the schedule annexed hereto.

Costs.

11. The court of summary jurisdiction may, in its discretion, allow any party, in respect of any expense he may have incurred in the employment of a solicitor, any sum not exceeding ten shillings where the sum claimed exceeds forty shillings, and not exceeding fifteen shillings where it exceeds five pounds.

Forms.

12. The forms in force under the Summary Jurisdiction Rules, 1886, so far as the same are applicable, together with the forms in the schedule hereto, and forms to the like effect, with such variations as circumstances may require, may be used in proceedings under this Act.

Annulment.

13. The rules and forms under the Employers and Workmen Act, 1875, heretofore in use are hereby annulled.

(Signed) HERSCHELL, C.

The 16th July, 1886.

SCHEDULE.

1.

Order rescinding Contract.

In the [county of . Petty sessional division of].

Between A. B., plaintiff,
and
C. D., defendant.

Before the court of summary jurisdiction sitting at .
It is adjudged that the [or this] contract [or instrument of

apprenticeship] made between the plaintiff and defendant [on the day of 19] be rescinded, and that the plaintiff [or defendant] do pay to the sum of pounds, being the whole [or a part] for wages [or damages, or in respect of the premium paid on such instrument of apprenticeship].

Dated the day of one thousand nine hundred and .

J. P.,

Justice of the peace for the [county] aforesaid.

(L.S.)

2.

Order for Performance of Contract.

In the [county of . Petty sessional division of].

Between *A. B.*, plaintiff,

and

C. D. [and *E. F.*], defendant.

Before the court of summary jurisdiction at .

It is ordered that the defendant [*C. D.*] do perform his contract [of apprenticeship] with the plaintiff, that is to say [setting out the particulars if necessary].

[And that he [or the defendant *E. F.*] do pay to the plaintiff the sum of for damages.]

And the defendant, the said *E. F.* [or *C. D.*], being willing to give security for the performance of such contract, the court hereby accepts his security in pounds, with suret in pounds [each] for the performance of such contract as aforesaid [in place of the payment of [£ part of] such damages].

Dated the day of one thousand nine hundred and .

J. P.,

Justice of the peace for the [county] aforesaid.

(L.S.)

3.

Undertaking by Defendant to Perform Contract.

In the [county of . Petty sessional division of].

Between *A. B.*, plaintiff,

and

C. D., defendant.

Whereas it having been found by the court of summary jurisdiction sitting at on the day of , that the defendant had broken the contract for the breach of which he was summoned, it is ordered that he should give security for the performance of his contract:

Now, therefore, I the defendant, and we [or I] his suret , do undertake that the said defendant will perform the said contract, that is to say [setting out the particulars if necessary].

And we do hereby severally acknowledge ourselves bound to forfeit to the plaintiff the sum of pounds and shillings, in case the said defendant fails to perform what he has hereby undertaken to perform.

(Signed where not taken orally) C. D. Defendant.
 E. F. }
 G. H. } Sureties.

Taken before me this day of .

J. P.,
 Justice of the peace for the [county] aforesaid.

(L.S.)

FEEES.

	s.	d.
For entry of every plaint, including summons thereon .	1	0
For order in writing on a plaint	2	0
For every undertaking given by way of security	2	0
For judgment-summons, including hearing	1	0
For warrant of distress or order of commitment	2	0
For summons to witness	1	0

N.B.—Where the sum claimed exceeds 1*l.* 0*s.* 0*d.*, or the sum in respect of the non-payment of which the summons for or order of commitment or warrant of distress issues exceeds 1*l.* 0*s.* 0*d.*, an additional fee of one shilling on each fee shall be taken.

For mileage in serving or executing process,	} Such reasonable costs as may be allowed by the court.
and for cost of conveying to prison	
For affidavit and postage	

ALIENS ACT, 1905.

THE SUMMARY JURISDICTION (ALIENS) RULES, 1906, DATED
JANUARY 3, 1906.

1. Proceedings under section 3 (1) (b) of the Aliens Act, 1905 (relating to the expulsion of pauper aliens, and aliens convicted abroad of extradition crimes), shall be commenced by complaint, and the provisions of the Summary Jurisdiction Acts with reference to proceedings on complaint shall, in so far as applicable, apply accordingly. Proceedings to expel pauper, &c., aliens.

2. The forms in the schedule hereto, or forms to the like effect, may be used with such variations as circumstances may require for the purposes of the Aliens Act, 1905. Forms.

3. These rules may be cited as the Summary Jurisdiction (Aliens) Rules, 1906. Short title.

Dated the 3rd day of January, 1906.

REID, C.

SCHEDULE.

ALIENS ACT, 1905, SECTION 3 (1) (b).

Complaint.

In the [county of . . .] Petty sessional division of [. . .].

The day of . . . one thousand nine hundred and . . .

The complaint of C. D., who states that A. B., an alien, who last entered the United Kingdom within twelve months before these proceedings were taken

either has within three months from the present date been in receipt of such parochial relief as disqualifies a person for the parliamentary franchise [or been found wandering without ostensible means of subsistence] [or been living under insanitary conditions due to overcrowding]

or has entered the United Kingdom after the 11th day of August, 1905, and has been sentenced in a foreign country with which there is an extradition treaty for a crime not being an offence of a political character which is as respects that country an extradition crime within the meaning of the Extradition Act, 1870, viz. :— . . .

Taken before me,

(L.S.)

Justice of the peace for the
[county] aforesaid.

ALIENS ACT, 1905, SECTION 3 (1) (a).

Certificate of Conviction and Recommendation for Expulsion.

In the [county of . Petty sessional division of].

Before the Court of [Summary Jurisdiction] sitting at

The day of one thousand nine hundred and .

I [or we] hereby certify

That A. B., to whom the particulars shown in the annexed Schedule relate, having been found by the Court to be an Alien, was this day convicted of the offence shown in the said Schedule, being an offence within the meaning of Section 3 (1) (a) of the Aliens Act, 1905; [and was committed to one of His Majesty's prisons, to be kept there for the space of]:

And that the Court recommend that an Expulsion Order should be made in the case of the said A. B., in addition to the said sentence [or in lieu of sentence].

Justice of the peace for the [county] aforesaid.

(L.S.)

Justice of the peace for the [county] aforesaid.

(L.S.)

Schedule.

Name

Nationality

Age

Dependents (if any)

Offence

Sentence

Prison to which committed

Police district in which offence was committed.

ALIENS ACT, 1905, SECTION 3 (1) (b).

Certificate with view to Expulsion.

In the [county of . Petty sessional division of].

Before the Court of Summary Jurisdiction sitting at

The day of One thousand nine hundred and .

C. D. having made a complaint that A. B., an alien, to whom the particulars shown in the Schedule hereto relate, last entered the United Kingdom within twelve months before the proceedings were taken, and

either that he has within three months from the time at which proceedings were commenced been in receipt of such parochial relief as disqualifies a person for the parliamentary franchise [or been found wandering without ostensible means of subsistence] [or been living under insanitary conditions due to overcrowding]

or that he has entered the United Kingdom after the 11th day of August, 1905, and has been sentenced in a foreign country with which there is an extradition treaty for a crime not being an offence of a political character which is as respects that country and

extradition crime within the meaning of the Extradition Act, 1870, viz. :

On hearing the said complaint I [*or We*] being satisfied that the said *A. B.* is an alien, hereby certify that the said *A. B.* last entered the United Kingdom within twelve months before these proceedings were taken, and that he [*here insert the clause of the complaint of which the Court was satisfied*].

Justice of the peace for the [*county*] aforesaid.

(L.S.)

Justice of the peace for the [*county*] aforesaid.

(L.S.)

Schedule.

Name

Nationality

Age

Dependents (if any)

Date of last entry into United Kingdom

Facts of complaint certified

Prison to which committed

Police district in which proceedings taken

ALIENS ACT, 1905.

DIRECTIONS, DATED DECEMBER 4, 1905, OF THE SECRETARY OF STATE FOR THE HOME DEPARTMENT, UNDER THE ALIENS ACT, 1905 (5 EDW. VII. c. 13, ss. 3 & 7 (3)), AS TO CUSTODY IN CONNECTION WITH EXPULSION ORDERS.

In pursuance of the provisions of section 7 (3) of the Aliens Act, 1905, I hereby direct, with regard to the custody of an alien in respect of whom a certificate has been given by a court with a view to his expulsion from the United Kingdom, that—

1.—(1) Where a court gives a certificate with a view to the expulsion of an alien, either under section 3 (1) (b) of the Aliens Act, 1905, or under section 3 (1) (a) thereof, without imposing a sentence of imprisonment, the alien shall, unless the court otherwise directs and admits him to bail, stand committed to the prison to which the court ordinarily commits prisoners until the orders of the Secretary of State with respect to his expulsion are received.

(2) Where a court gives a certificate under section 3 (1) (a) and imposes a term of imprisonment not exceeding one month, the alien shall, if the Secretary of State has not sooner decided upon his case, be detained in prison until the orders of the Secretary of State with respect to his expulsion have been received.

2. In any such case as aforesaid, a copy of the certificate, signed by the clerk or other proper officer of the court giving the certificate, shall be sufficient authority to the police to take the alien into custody and convey him to prison, and to the governor of the prison to receive and detain him until the orders of the Secretary of State with respect to his expulsion are received.

3. Where any such certificate is given by a court, the certificate shall be forwarded forthwith to the Secretary of State, and a copy of the certificate, signed by the clerk or other proper officer of the court, shall be given to the officer charged with the duty of conveying the alien to prison.

A. AKERS-DOUGLAS,

One of His Majesty's Principal
Secretaries of State.

Whitehall,
4th December, 1905.

THE SUMMARY JURISDICTION (CHILDREN ACT) RULES, 1909.

I. The security which a Court of Summary Jurisdiction may, under section 99 (ii.) of the Children Act, 1908, require a parent or guardian to give for the good behaviour of a child or young person shall be given by way of recognizance ; and the forms relating to recognizances prescribed by the Summary Jurisdiction Rules, 1886, or forms to the like effect, shall be applicable thereto with such variations as circumstances may require.

Security for good behaviour of child or young person.

II. When an order is made by a Court of Summary Jurisdiction for a contribution to the maintenance of a child under section 75 of the Children Act, 1908, the clerk of the Court of Summary Jurisdiction shall within three days from the date of the order send by post to the chief inspector of reformatory and industrial schools a copy of the order.

Copy of order on parent to contribute to be sent to chief inspector.

III. An order made under section 75 of the Children Act, 1908, on a parent or other person liable to maintain a child or young person, may be served by any constable or school attendance officer or agent of the chief inspector of reformatory and industrial schools by delivering a copy of such order to the person on whom it is made, or by leaving the same at such person's last known place of abode with some other person for him.

Service on parent of order to contribute.

IV. The time within which an application may be made to the court against an order made under section 75 of the Children Act, 1908, on a parent or other person liable to maintain a child or young person, shall be one month after service of a copy of the order.

Time within which application may be made against order to contribute.

V. Where a child or young person is arrested or charged with any offence, or where an application is made to a petty sessional court for an order to send him to a certified industrial school, a summons or warrant may be issued by a Court of Summary Jurisdiction to enforce the attendance of a parent or guardian for the purposes mentioned in section 98 (iii.) of the Children Act, 1908, in the same manner as if an information were laid or complaint made upon which a summons, or warrant, could be issued against a defendant under the Summary Jurisdiction Acts or the Indictable Offences Act, 1848 ; and a summons to the child or young person may include a summons to the parent or guardian to enforce his attendance for the said purpose.

Summons to enforce attendance of parent or guardian.

VI. The forms in Schedule A. hereto, or forms to the like

Forms.

effect, may be used with such variations as circumstances may require for the purposes of the Children Act, 1908, and for the purposes of the Elementary Education Act, 1876.

Forms 3, 5, 6, 7, and 8 may be used, as circumstances require, in substitution for Forms 10, 11, 12, 14, and 15 in the schedule to the Summary Jurisdiction Rules, 1886.

Where a young person is committed to prison on remand or commitment for trial (under section 97 of the Children Act, 1908) or upon conviction of an offence or in default of payment of a fine, damages, or costs (under section 102 of the Children Act, 1908), the court shall certify, in using Forms 10, 11, 12, or 15 in the schedule to the Summary Jurisdiction Rules, 1886, either that "the young person is of so unruly a character that he cannot be detained in a place of detention," or that "he is of so depraved a character that he is not a fit person to be detained in a place of detention."

Title and
repeals.

VII. These Rules, which shall come into operation on the 1st of April, 1909, may be cited as the Summary Jurisdiction (Children Act) Rules, 1909; and the Summary Jurisdiction (Youthful Offenders) Rules, 1903, made on the 14th September, 1903, are hereby annulled, except for cases committed before 1st April, 1909.

Dated the 23rd day of March, 1909, and certified to be
urgent.

LOREBURN, C.

SCHEDULE A.

CHILDREN ACT, 1908.

1. *Summons to Child or Young Person, or to Parent or Guardian, or to both.*

In the [county of . Petty sessional division of].
To [A.B. and] C.D.

Information has been laid this day by for that [you], A.B.
being a child or young person under 16, on the day of ,
19 , at in the aforesaid, did

[And information has further been laid by for that you,
C.D., are the parent [or guardian] of the said child or young
person.]

You are therefore [each of you] hereby summoned to appear
before the court of summary jurisdiction sitting at on
day the day of , 19 , at the hour of in the noon,
to answer to the said informations.

Given under my hand and seal the day of one thou-
sand nine hundred and .

J.P.,

(L.S.)

Justice of the peace for the [county] aforesaid.

2. *Summons for Attendance of Parent, &c., of Young Person or Child.*

In the [county of . Petty sessional division of].
To C.D., of

Whereas A.B., a child [or young person] within the meaning of the Children Act, 1908, of whom you are stated to be the father [or parent or guardian having the possession and control of such child or young person] is charged for that (*here set forth the offence charged*)

[or Whereas application is made for an order for the committal to a certified industrial school of one A.B., a child under the age of 14 years, of whom you are stated to be the father [or parent or guardian having the possession and control of such child].

You are therefore hereby summoned to attend before the court of summary jurisdiction sitting at on the day of , 19 , at the hour of in the noon and during all the proceedings of the case.

Given under my hand and seal this day of one thousand nine hundred and

J.P.,

(L.S.)

Justice of the peace for the [county] aforesaid.

3. *Commitment to Place of Detention on Remand.*

In the [county of . Petty sessional division of].

To each and all of the constables of , and to the occupier of the place of detention at

A.B., hereinafter called the defendant, being a child or young person under 16, being brought before the court of summary jurisdiction sitting at , charged with having

The hearing of the case being adjourned:

You, the said constables, are therefore hereby commanded to convey the defendant to the said place of detention, and there to deliver him to the occupier thereof, together with this warrant, and you, the occupier of the said place of detention, to receive him into your custody, and keep him until the day of , 19 , and on that day you, the said constables, are required to convey him before the court of summary jurisdiction sitting at at the hour of in the noon, to be further dealt with according to law.

Given under my hand and seal the day of one thousand nine hundred and .

J.P.,

(L.S.)

Justice of the peace for the [county] aforesaid.

4. *Commitment to Place of Detention pending Trial.*

In the [county of . Petty sessional division of].

To each and all of the constables of , and to the occupier of the place of detention at

A.B., hereinafter called the defendant, being a child or young

person under 16, being brought before the court of summary jurisdiction sitting at _____, charged with having

The defendant being committed for trial:

WEED

You, the said constables, are therefore hereby commanded to convey the defendant to the said place of detention, and there to deliver him to the occupier thereof, together with this warrant, and you, the occupier of the said place of detention, to receive him into your custody, and keep him until the next court of assize [or quarter sessions], when you, the said constables, are required to convey him before such court to be further dealt with according to law.

Given under my hand and seal the _____ day of _____ one thousand nine hundred and _____

J.P.,

(L.S.)

Justice of the peace for the [county] aforesaid.

5. Conviction for Penalty, &c.

In the [county of _____]. Petty sessional division of _____].

Before the court of summary jurisdiction sitting at _____.

A.B., hereinafter called the defendant, being above the age of seven years, and a child [or being a young person] within the meaning of the Children Act, 1908, is this day convicted for that he, on the _____ day of _____, 19____, at _____, within the _____ aforesaid did

And it is adjudged that the defendant [or C.D., the parent [or guardian] of the said A.B.] do for the said offence forfeit and pay the sum of _____, and do also pay the further sum of _____ for damages and _____ for costs [by instalments of _____ for every _____ days, the first instalment to be paid] forthwith [or on the _____ day of _____]:

And in default of payment it is adjudged that [the sums due under this adjudication be levied by distress and sale of the defendant's [or the said C.D.'s] goods, and in default of sufficient distress that] the defendant [or the said C.D.] be imprisoned in his Majesty's prison at _____ [or detained in custody in the place of detention at _____], and there kept [to hard labour] for the space of _____, unless the said sums [and all costs and charges of the [said distress and] commitment and of his conveyance to the said prison [or place of detention]] be sooner paid.

Given under our hands and seals the _____ day of _____ one thousand nine hundred and _____

J.P.,

(L.S.)

Justice of the peace for the [county] aforesaid.

J.P.,

(L.S.)

Justice of the peace for the [county] aforesaid.

Indorsement where Security for Payment is permitted.

It is ordered that the defendant [or C.D.] be at liberty to give to the satisfaction of [this court] security in the sum of _____ with suret _____ in the sum of _____ [each] for the due payment of the said sums as adjudged.

6. *Conviction (Commitment to Place of Detention).*

In the [county of . Petty sessional division of].
 Before the court of summary jurisdiction sitting at .
A.B., hereinafter called the defendant, being above the age of seven years, and a child [or being a young person] within the meaning of the Children Act, 1908, is this day convicted for that he, on the day of , 19 , at , within the afore-said, did

[*If detention is ordered :—*

And the court being satisfied that none of the other methods in which the case may legally be dealt with is suitable, it is ordered that the defendant, for his said offence, be committed to custody in the place of detention at and there kept for the space of .]

[*If costs are ordered to be paid by a young person, add :—*

And it is ordered that the defendant pay to the sum of for costs [by instalments of for every days, the first instalment to be paid] forthwith [or on the day of]:

And in default of payment it is ordered that the sum due be levied by distress and sale of the defendant's goods, and in default of sufficient distress that the defendant be committed to custody in the said place of detention for the space of commencing at the termination of the period of detention before adjudged, unless the said sum [and all costs and charges of the [said distress and] commitment, and of his conveyance to the said place of detention] be sooner paid.]

[*In other cases where costs are ordered, add :—*

And it is ordered that *C.D.*, the parent [or guardian] of the defendant pay to the sum of for costs [by instalments of for every days, the first instalment to be paid] forthwith [or on the day of]:

And in default of payment it is ordered that the sums due be levied by distress and sale of the said *C.D.*'s goods, and in default of sufficient distress that the said *C.D.* be imprisoned in his Majesty's prison at and there kept for the space of unless the said sums [and all costs and charges of the [said distress and] commitment and of his conveyance to the said prison] be sooner paid.]

[*Where security for good behaviour is required, add :—*

And it is further ordered that *C.D.*, the parent [or guardian] of the said defendant, do forthwith to the satisfaction of [this court] give security in the sum of for the good behaviour of the said defendant for the term of now next ensuing.]

Given under our hands and seals the day of one thousand nine hundred and

J.P., (L.S.)
 Justice of the peace for the [county] aforesaid.

J.P., (L.S.)
 Justice of the peace for the [county] aforesaid.

7. *Conviction of Child for Indictable Offence.*

In the [county of . Petty sessional division of].
Before the court of summary jurisdiction sitting at (being a petty sessional court).

A.B., hereinafter called the defendant, being a child within the meaning of the Children Act, 1908, and above the age of seven years, is this day convicted [without objection of the parent or guardian] for that he on the day of at , in the aforesaid, did :

And it is adjudged that [*proceed as in other forms of conviction ; if whipping is ordered, insert either in addition to or in substitution for any other punishment,—*

And that the defendant, being a male child, be, as soon as practicable, privately whipped with strokes of a birch rod].

Given under our hands and seals the day of one thousand nine hundred and

J.P., (L.S.)
Justice of the peace for the [county] aforesaid.

J.P., (L.S.)
Justice of the peace for the [county] aforesaid.

8. *Conviction of Young Person (by consent) for Indictable Offence.*

In the [county of . Petty sessional division of].
Before the court of summary jurisdiction sitting at (being a petty sessional court).

A.B., hereinafter called the defendant, being a young person within the meaning of the Children Act, 1908, is this day charged for that he on the day of , 19 , at in the aforesaid, did :

The defendant, having consented to be dealt with summarily, is convicted of the said offence :

And is adjudged that [*proceed as in other forms of conviction*].

Given under our hands and seals the day of one thousand nine hundred and

J.P., (L.S.)
Justice of the peace of (qu. for) the [county] aforesaid.

J.P., (L.S.)
Justice of the peace for the [county] aforesaid.

9. *Order on Parent or Guardian to Pay Damages or Costs where a Child or Young Person is not convicted.*

In the [county of . Petty sessional division of].
Before the court of summary jurisdiction sitting at (being a petty sessional court).

Whereas A.B., hereinafter called the defendant, being a child [or young person] within the meaning of the Children Act, 1908, has

been this day charged for that he, on the day of 19 ,
at within the aforesaid, did

And whereas the court is of opinion that the charge is proved:

It is ordered that *C.D.*, the parent [*or* guardian] of the defendant do pay the sum of for damages and for costs [by instalments of for every days, the first instalment to be paid] forthwith [*or* on the day of , 19].

And in default of payment it is ordered that [the sums due under this order be levied by distress and sale of the said parent's [guardian's] goods, and in default of sufficient distress that] the said parent [guardian] be imprisoned in his Majesty's prison at and there kept for the space of unless the said sums [and all costs and charges of the [said distress and] commitment and of his conveyance to the said prison] be sooner paid.

[Where security for good behaviour is required, add:—

And it is further ordered that the said *C.D.* do forthwith to the satisfaction of [this court] give security in the sum of for the good behaviour of the said defendant for the term of now next ensuing.]

Given under our hands and seals the day of one thousand nine hundred and

J.P., (L.S.)

Justice of the peace for the [county] aforesaid.

J.P., (L.S.)

Justice of the peace for the [county] aforesaid.

10. Order for Detention in Reformatory School.

In the [county of . Petty sessional division of].
Before the court of summary jurisdiction sitting at (being a petty sessional court).

A.B., hereinafter called the defendant, who appears to the said court to be twelve years of age or upwards, but less than sixteen years of age, to wit, of the age of years, having been born, so far as has been ascertained, on the day of , 19 , and who resides at in the county [*or* county borough] of , is this day convicted [he having consented to be dealt with summarily (*or* without objection of his parent or guardian)] for that he, on the day of , 19 , at within the aforesaid did [*here state the offence*].

And it is ordered in pursuance of the Children Act, 1908, that the defendant (whose religious persuasion appears to the court to be) be sent to the certified reformatory school at in the county [*or* borough] of the managers whereof are willing to receive him [*or* to some certified reformatory school to be hereafter named in this behalf], and to be there detained until he shall have attained the age of years [*or* for the period of commencing from and after the day of , 19] [*or* this day] [*or* the date of his reception therein],* and it is further ordered that the said defendant be taken to the place of detention at [*or* to the custody of a fit person who is willing to receive

*The youthful offender will, under s. 62 (i) of the

Children Act, 1908, remain under the supervision of the managers of the school until he is 19.

him], and to be [there] [by him] detained until he is sent to a certified reformatory school in pursuance of this order, or is otherwise discharged in due course of law.

And it is further ordered that *C.D.*, residing at the [parent of] [person legally liable to maintain] the said *A.B.*, shall pay to the chief inspector of reformatory and industrial schools, or his agents, a weekly sum of shillings [during the whole of the time for which the said *A.B.* is liable to be detained in the school] [until].

Given under our hands and seals the day of one thousand nine hundred and

J.P., (L.S.)
Justice of the peace for the [county] aforesaid.

J.P., (L.S.)
Justice of the peace for the [county] aforesaid.

11. *Order of Detention in a Certified Industrial School.*

In the [county of . Petty sessional division of].

Before the court of summary jurisdiction sitting at (being a petty sessional court).

Whereas [here insert that one of the recitals in* *Schedule B* appropriate to the case]:

And whereas the court is satisfied that it is expedient to deal with the said child by sending him to a certified industrial school:

And whereas the religious persuasion of the said child appears to the court to be

It is hereby ordered that the said child shall be sent to the certified industrial school at to be there detained until [or for the period of] commencing from and after the day of , 19 [or this day] [or the date of his reception therein].†

And it is further ordered that the said child be taken to [the the place of detention at] [or to the custody of a fit person who is willing to receive him], and to be [there] [by him] detained until he is sent to a certified industrial school, or is otherwise discharged in due course of law.

And it is further ordered that *C.D.*, residing at the [parent of] [person legally liable to maintain] the said child shall pay to the chief inspector of reformatory and industrial schools, or his agents, a weekly sum of shillings [during the whole of the time for which the said child is liable to be detained in the school] [until].

Given under our hands and seals the day of one thousand nine hundred and

J.P., (L.S.)
Justice of the peace for the [county] aforesaid.

J.P., (L.S.)
Justice of the peace for the [county] aforesaid.

* *Post*.
p. 1153.

†The child will, under s. 62 (2) of the Children Act, 1908, remain under the supervision of the managers of the school until he is 18, unless he is committed for the purpose only of enforcing an attendance order made in consequence of his parent, guardian, or other person legally liable to maintain him, neglecting to provide efficient elementary instruction for him.

12. *Summons to Parent, &c., upon Complaint for Contribution Order.*

In the [county of]. Petty sessional division of].
To C.D., of

Complaint has been made this day by E.F., a person duly authorised by the chief inspector of reformatory and industrial schools to take proceedings in this behalf, for that you are the parent of [or person liable to maintain] one A.B., who is now detained in the certified reformatory [industrial] school at in the county of under the provisions of the Children Act, 1908, and who has been duly ordered to be detained therein until he attains the age of years [or for the period of commencing from the day of , 19], and that you are of sufficient ability to contribute to his maintenance.

You are therefore hereby summoned to appear before the court of summary jurisdiction sitting at (the same being a petty sessional court) on the day of at the hour of in the noon to answer the said complaint.

Given under my hand and seal this day of one thousand nine hundred and

J.P.,

(L.S.)

Justice of the peace for the [county] aforesaid.

13. *Contribution Order on Parent, &c., of Child in Reformatory or Industrial School.*

In the [county of]. Petty sessional division of].
Before the court of summary jurisdiction sitting at (being a petty sessional court).

E.F., a person duly authorised by the chief inspector of reformatory and industrial schools to take proceedings in this behalf, having made a complaint that one C.D., residing at , is the parent of [or person liable to maintain] a certain child [or young person], named A.B., of the age of years, or thereabouts, who is now detained in the certified reformatory [industrial] school at in the county of in pursuance of an order duly made under the provisions of the Children Act, 1908, directing his detention therein until he attains the age of years [or for the period of , commencing from the day of 19], and that the said C.D. is of sufficient ability to contribute to the maintenance of the said child [or young person]:

On hearing the said complaint it is adjudged that the matter thereof is true, and it is ordered that the said C.D. do pay to the said chief inspector of reformatory and industrial schools or his agents a weekly sum of shillings and pence during the whole of the period for which the said child [or young person] is

liable to be detained in the school [*or* until], and the sum of
for costs.

Given under our hands and seals the day of one
thousand nine hundred and

J.P., (L.S.)

Justice of the peace for the [*county*] aforesaid.

J.P., (L.S.)

Justice of the peace for the [*county*] aforesaid.

TAKE NOTICE that you, *C.D.*, are required by section 75 (vi.) of the
Children Act, 1908, to give notice to the chief inspector of
reformatory and industrial schools of any change of address,
under a penalty of £2.

14. *Order of Detention in a Certified Day Industrial School.*

In the [*county of* . *Petty sessional division of*].
Before the court of summary jurisdiction sitting at (being
a petty sessional court).

* *Post*,
p. 1153.

Whereas [*here insert that one of the recitals in* Schedule B appro-*
priate to the case]:

And whereas the court is satisfied that it is expedient to deal
with the said child by sending the child to a certified day industrial
school:

And whereas the religious persuasion of the said child appears
to the court to be

It is hereby ordered that the said child shall be sent to the
certified day industrial school at to be there detained until
[*or* for the period of commencing from and after the
day of , 19 [*or* this day] [*or* the date of his reception
therein]], during such hours as may be authorised by the rules of
the school approved by the Secretary of State.

And it is further ordered that *C.D.*, residing at the [*parent*
of] [*person legally liable to maintain*] the said child shall pay to
a weekly sum of [*during the whole of the time for*
which the said child is liable to be detained in the school] [*until*
].

Given under our hands and seals the day of one
thousand nine hundred and

J.P., (L.S.)

Justice of the peace for the [*county*] aforesaid.

J.P., (L.S.)

Justice of the peace for the [*county*] aforesaid.

15. *Attendance Order (Day Industrial School).*

In the [*county of* . *Petty sessional division of*].
Before the court of summary jurisdiction sitting at .
In pursuance of the 11th section of the Elementary Education
Act, 1876, it is hereby ordered that *A.B.* of , who

appears to us to be a child under 14 years of age (whose religious persuasion appears to us to be), do attend the certified day industrial school at until , during such hours as may be authorised by the rules of the school approved by the Secretary of State.

Given under our hands and seals the day of one thousand nine hundred and

J.P., (L.S.)
Justice of the peace for the [county] aforesaid.

J.P., (L.S.)
Justice of the peace for the [county] aforesaid.

16. *Information on Disobedience of Order on Parent, &c., for Contribution.*

In the [county of . Petty sessional division of].

The information and complaint of *E.F.* of (hereinafter called the complainant), on behalf of the chief inspector of reformatory and industrial schools, taken upon oath before me, the undersigned, one of his Majesty's justices of the peace for the said [county], the day of , 19 , who saith, that by an order made under the authority of the statutes in that behalf by the [court of summary jurisdiction] sitting at on the day of , 19 , *C.D.* (hereinafter called the defendant), of was adjudged and ordered to pay to the chief inspector or to his agents the sum of per week for the support and maintenance of *A.B.*, a child [*or* young person] whom the said defendant was legally liable to maintain, and who was duly committed under the authority of the statutes in that behalf to the certified industrial [*or* reformatory] school at

And this deponent further saith that the said defendant hath had due notice of the said order, and that the payments directed to be made by the said order have not been made according thereto by the said defendant, and that there is now in arrear for the same the sum of being the amount of arrears for weeks' payments, and this complainant therefore prays justice in the premises.

Exhibited and sworn before me, the day and year first above written, at in the [county] aforesaid.

J.P., (L.S.)
Justice of the peace for the [county] aforesaid.

17. *Summons for Arrears.*

In the [county of . Petty sessional division of].
To *C.D.*

Complaint has been made this day by *E.F.*, of (hereinafter called the complainant), on behalf of the chief inspector of reformatory and industrial schools, who saith that on the day of , 19 , an order was duly made under the authority of the statutes in that behalf by the [court of summary jurisdiction] sitting at in the said [county] by which said order you were duly ordered and

adjudged to pay to the said chief inspector or his agents the sum of
shillings per week.

And the complainant further saith that you have had due notice of the said order, and that the payments directed to be made by the said order have not been made according thereto by you, and that there is now in arrear for the same the sum of being the amount of arrears for weeks' payments.

You are therefore hereby summoned to appear before the court of summary jurisdiction sitting at on day the day of 19 at the hour of in the noon, to answer to the said complaint.

Given under my hand and seal the day of one thousand nine hundred and .

J.P.,

(L.S.)

Justice of the peace for the [county] aforesaid.

18. *Warrant for Arrears.*

In the [county] of . Petty sessional division of].

To each and all of the constables of the

Whereas information and complaint have this day been made upon oath before me, the undersigned, one of his Majesty's justices of the peace for the said [county] by *E.F.*, of (hereinafter called the complainant), on behalf of the chief inspector of reformatory and industrial schools, that by an order made under the authority of the statutes in that behalf by the [court of summary jurisdiction] sitting at in the said [county] on the day of 19 , one *C.D.* (hereinafter called the defendant), of , the parent of [or person legally liable to maintain] one *A.B.*, a child [or young person] who had been duly committed under the authority of the statutes in that behalf to the certified industrial [reformatory] school at was duly ordered and adjudged to pay to the said chief inspector or his agents the sum of shillings per week for the support and maintenance of the said child [young person], and that the said defendant has had due notice of the said order, and that the payments directed to be made by the said order have not been made according thereto by the said defendant, and that there is now in arrear for the same the sum of , being the amount of arrears for weeks' payments.

These are therefore in his Majesty's name to command you and every of you the said constables forthwith to apprehend the said defendant and convey him before the court of summary jurisdiction sitting at in the said [county] to answer the premises, and to be dealt with according to law.

Given under my hand and seal, this day of one thousand nine hundred and at in the [county] aforesaid.

J.P.,

(L.S.)

Justice of the peace for the said [county].

19. *Warrant of Distress for Arrears.*

In the [county of . Petty sessional division of].
 To each and all of the constables of the
 Whereas on the day of one thousand nine hundred
 and , on the complaint of the chief inspector of reformatory
 and industrial schools, it was adjudged by the court of summary
 jurisdiction sitting at in the said county that the sum of
 was then due from *C.D.*, of to the said chief inspector
 under an order made in pursuance of the Children Act, 1908,
 together with the sum of for costs:

And default having been made in payment:

You are hereby commanded forthwith to make distress of the
 goods of the said *C.D.* (except the wearing apparel and bedding of
 him and his family, and, to the value of five pounds, the tools and
 implements of his trade); and if within the space of *five* clear days
 next after the making of such distress, unless he consents in
 writing to an earlier sale, the sum stated at the foot of this warrant,
 together with the reasonable costs and charges of the making and
 keeping of the said distress, be not paid, then to sell the said goods,
 and pay the money arising therefrom to the clerk of that court, and
 if no such distress can be found, to certify the same to that court.

Given under our hands and seals the day of one
 thousand nine hundred and

J.P., (L.S.)
 Justice of the peace for the said [county].
J.P., (L.S.)
 Justice of the peace for the said [county].

	£	s.	d.
Amount adjudged			
Paid			
Remaining due			
Cost of issuing this warrant			
Total amount to be levied			

20. *Commitment in lieu of Distress.*

In the [county of . Petty sessional division of].
 To each and all of the constables of , and to the governor
 of his Majesty's prison at

Whereas *C.D.*, of (hereinafter called the defendant), was *this*
day adjudged before the court of summary jurisdiction sitting at
 in the said county, to owe to the chief inspector of
 reformatory and industrial schools the sum of due to the
 said chief inspector from him the said defendant, under an order
 made in pursuance of the Children Act, 1908, and the sum of
 for costs:

And default having been made in payment, it was directed

that such sums should be levied by distress and sale of the defendant's goods :

And it appearing to this court that the defendant has no *sufficient* goods whereon to levy distress, *or that the levy of the distress will be more injurious to the defendant and his family than imprisonment :*

It is ordered that the defendant be imprisoned in his Majesty's prison aforesaid, and there kept for the space of unless the said sums be sooner paid.

And you the said constables are hereby commanded to take the defendant and convey him to the said prison, and there deliver him to the governor thereof, together with this warrant; and you, the governor of the said prison, to receive the defendant into your custody, and keep him for the space of unless the said sums be sooner paid.

Given under our hands and seals this day of one thousand nine hundred and

J.P., (L.S.)
Justice of the peace for the said [county].
J.P., (L.S.)
Justice of the peace for the said [county].

21. Commitment in Default of Distress.

In the [county of . Petty sessional division of].

To each and all of the constables of , and to the governor of his Majesty's prison at

Whereas *C.D.*, of (hereinafter called the defendant), was on the day of , one thousand nine hundred and , before the court of summary jurisdiction sitting at in the said county, adjudged to owe to the chief inspector of reformatory and industrial schools the sum of due to the said chief inspector from him, the said defendant, under an order made in pursuance of the Children Act, 1908, and the sum of for costs :

And default having been made in payment, the constables aforesaid were directed by warrant dated the day of , one thousand nine hundred and , to levy the said sums by distress; and it now appearing that no sufficient distress whereon to levy the said sums could be found :

You, the said constables, are hereby commanded to convey the defendant to the said prison, and there deliver him to the governor thereof, together with this warrant; and you, the governor of the said prison, to receive the defendant into your custody and keep him for the space of unless the said sums and all costs and charges of the said distress amounting to the further sum of be sooner paid.

Given under our hands and seals the day of one thousand nine hundred and

J.P., (L.S.)
Justice of the peace for the said [county].
J.P., (L.S.)
Justice of the peace for the said [county].

SCHEDULE B.

Recitals to be Used to Orders of Detention in Certified Industrial School.

A.

Whereas *A.B.*, of _____, who appears to the court to be a child under the age of 14 years (having been born, so far as has been ascertained, on the _____ day of _____), and who resides in the district of the education authority for _____, has been found begging or receiving alms [*or* begging or receiving alms under the pretence of singing, playing, performing or offering for sale (*here state article, e.g., matches*)] [*or* being in a street, premises, or place for the purpose of begging or receiving alms] [*or* of begging or receiving alms under the pretence of singing, playing, performing, or offering for sale (*here state article*)].

B.

Whereas *A.B.*, of _____, who appears to the court to be a child under the age of 14 years (having been born, so far as has been ascertained, on the _____ day of _____), and who resides in the district of the education authority for _____, has been found wandering, and not having any home [*or* not having any settled place of abode, *or* visible means of subsistence] [*or* having no parent or guardian] [*or* having a parent or guardian who does not exercise proper guardianship].

C.

Whereas *A.B.*, of _____, who appears to the court to be a child under the age of 14 years (having been born, so far as has been ascertained, on the _____ day of _____), and who resides in the district of the education authority for _____, has been found destitute, not being an orphan and having both parents or his surviving parent [*or, in the case of an illegitimate child, his mother*], undergoing penal servitude [*or* imprisonment].

D.

Whereas *A.B.*, of _____, who appears to the court to be a child under the age of 14 years (having been born, so far as has been ascertained, on the _____ day of _____), and who resides in the district of the education authority for _____, has been under the care of a parent or guardian, who, by reason of criminal [*or* drunken] habits, is unfit to have the care of the child.

E.

Whereas *A.B.*, of _____, who appears to the court to be a child under the age of 14 years (having been born, so far as has been ascertained, on the _____ day of _____), and who resides in the district of the education authority for _____, is the legitimate [*or* illegitimate] daughter of _____, who has been convicted of an offence under section four [*or* section five] of the Criminal Law Amendment Act, 1885, in respect of one of his daughters.

F.

Whereas *A.B.*, of _____, who appears to the court to be a child under the age of 14 years (having been born, so far as has been ascertained, on the _____ day of _____), and who resides in the district of the education authority for _____, has been frequenting the company of a reputed thief [*or* a common or reputed prostitute].

G.

Whereas *A.B.*, of _____, who appears to the court to be a child under the age of 14 years (having been born, so far as has been ascertained, on the _____ day of _____), and who resides in the district of the education authority for _____, has been lodging [*or* residing] in a house or the part of a house used by any (*sic*) prostitute for the purposes of prostitution [*or* has been living in circumstances calculated to cause, encourage, or favour the seduction or prostitution of the child].

H.

Whereas *A.B.*, of _____, who appears to the court to be a child under the age of 12 years (having been born, so far as has been ascertained, on the _____ day of _____), and who resides in the district of the education authority for _____, has been charged before the court with the offence of _____, which is punishable in the case of an adult by penal servitude [*here state lesser punishment*].

I.

Whereas *A.B.*, of _____, who appears to the court to be a child over the age of 12 years, but under the age of 14 years (having been born, so far as has been ascertained, on the _____ day of _____), and who resides in the district of the education authority for _____, has been charged before the court with the offence of _____, which is punishable in the case of an adult by penal servitude [*here state lesser punishment*], but has not been previously convicted, and whereas the court is satisfied that the said child should be sent to a certified school, but, having regard to the special circumstances of the case, should not be sent to a certified reformatory school, and is also satisfied that the character and antecedents of the child are such that he will not exercise an evil influence over the other children in a certified industrial school, and whereas the managers of the certified industrial school at _____ are willing to receive the said child.

J.

Whereas the parent [*or* guardian] of *A.B.*, of _____, who appears to the court to be a child under the age of 14 years (having been born, so far as has been ascertained, on the _____ day of _____), and who resides in the district of the education authority for _____, has proved to the court that he is unable to control the said child,

and represents that he desires the said child to be sent to a certified industrial school, and whereas the court is satisfied that the parent [or guardian] understands the results which will follow.

K.

Whereas the Guardians of the Poor of Union [or Board of Management of the District Poor Law School] have represented to the court that A.B., who appears to the court to be a child under the age of 14 years (having been born, so far as has been ascertained, on the day of), and who resides in the district of the education authority for , being maintained in the workhouse of the said union [or in the said district pauper school], is refractory [or is the child of parents, one of whom has been convicted of an offence punishable with penal servitude or imprisonment], and that it is desirable that the said child should be sent to a certified industrial school.

L.

Whereas an attendance order under the 11th section of the Elementary Education Act, 1876, was made against the child A.B., of (born, so far as has been ascertained, on the day of), and who resides in the district of the education authority for , and who is under the said Act prohibited from being taken into full-time employment, on the ground that his parent habitually and without reasonable excuse neglected to provide efficient elementary instruction for him, and the said attendance order has not been complied with, without any reasonable excuse within the meaning of the said Act, and whereas [the parent has satisfied the court that he has used all reasonable efforts to enforce compliance with the said order] [or the said non-compliance was not the first non-compliance with the said order].

M.

Whereas an attendance order under the 11th section of the Elementary Education Act, 1876, was made against the child A.B., of (born, so far as has been ascertained, on the day of), and who resides in the district of the education authority for , on the ground that he was found habitually wandering [or not under proper control] [or in the company of rogues, vagabonds, or disorderly persons] [or reputed criminals], and the said attendance order has not been complied with, without any reasonable excuse within the meaning of the said Act, and whereas [the parent has satisfied the court that he has used all reasonable efforts to enforce compliance with the said order] [or whereas (*sic*) the said non-compliance was not the first non-compliance with the said order].

N.

Whereas an order of detention in the day industrial school at _____ under section 78 of the Children Act, 1908, [or section 12 of the Elementary Education Act, 1876], was made on _____ against *A.B.*, who appears to the court to be a child under the age of 14 (having been born, so far as has been ascertained, on the _____ day of _____), and who resides in the district of the education authority for _____, on the ground that (*here state the ground on which the former order was made, following the terms of such recital as the case may require*), and whereas the said *A.B.* wilfully neglects to attend the said day industrial school [or wilfully neglects or wilfully refuses to conform to the rules of the said day industrial school].

DAY INDUSTRIAL SCHOOLS.

ORDER IN COUNCIL APPLYING CERTAIN PROVISIONS OF THE CHILDREN ACT, 1908 (8 EDW. VII. C. 67) TO CERTIFIED DAY INDUSTRIAL SCHOOLS, DATED APRIL 2, 1909.

(Selected Portions.)

Choice of School.

III. Section 62 of the Children Act shall, in its application to day industrial schools, take effect with modifications as follows:—

The day industrial school to which a child is to be sent under a detention order shall be such school as may be specified in the order, being some certified day industrial school (whether situate within the jurisdiction of the court making the order or not) the managers of which are willing to receive the child, and which is within two and a half miles of the residence of the child.

Provided that, if it is found impossible to specify the school in the detention order, the school shall be such as a justice having jurisdiction in the place where the court which made the order sat may by endorsement on the detention order direct.

Period of Detention.

IV. Section 65 of the Children Act shall, in its application to day industrial schools, take effect with modifications as follows:—

The detention order shall specify the time for which the child is to be detained in the school, being such time as to the court may seem proper for the teaching and training of the child, but not in any case extending beyond the time when the child will, in the opinion of the court, attain the age of fourteen years.

V. Section 66 of the Children Act (*ante*, p. 185) shall, in its application to day industrial schools, take effect with modifications as follows:—

- (i.) the application must be made before the child has been sent to a certified day industrial school, or within thirty days after his arrival at the school; and
- (ii.) the applicant must show to the satisfaction of the court that the managers of the school named are willing to receive the child; and
- (iii.) nothing in this section shall be construed as preventing and such person as aforesaid from making an application to the Secretary of State after the expiration of the said period of thirty days to exercise the powers of transfer conferred on him by the other provisions of the Children Act.

Placing out on Licence.

VI. Section 67 of the Children Act shall, in its application to day industrial schools, take effect with modifications as follows :—

(4) Any child refusing to return to the school when required to do so on the revocation or forfeiture of his licence, shall be liable to the same penalty as if he had wilfully neglected to attend the day industrial school.

(5) The time during which a child is absent from a day industrial school in pursuance of a licence under this section shall be deemed to be part of the time of his detention in the school ; Provided that, where a child has failed to return to the school on the licence being forfeited or revoked, the time which elapses after his failure so to return shall be excluded in computing the time during which he is to be detained in the school.

(6) Where a licence has been revoked or forfeited and the child refuses or fails to return to the school, a court of summary jurisdiction, if satisfied by information on oath that there is reasonable ground for believing that his parent or guardian could produce the child, may issue a summons requiring the parent or guardian to attend at the court on such day as may be specified in the summons, and to produce the child, and, if he fails to do so without reasonable excuse, he shall, in addition to any other liability to which he may be subject under the provisions of Part IV. of the Children Act, be liable on summary conviction to a fine not exceeding one pound.

Refusal to conform to Rules.

VIII. Section 71 of the Children Act shall, in its application to day industrial schools, take effect with modifications as follows :—

If a child of the age of twelve years or upwards sent to a certified day industrial school under a detention order is guilty of a serious and wilful breach of the rules of the school, or of inciting other inmates of the school to such a breach, he shall be liable to be brought before a petty sessional court, and the court, if satisfied on inquiry that it is expedient so to deal with the child, may order him to be sent to a certified industrial school, and to be there detained, subject and according to the provisions of Part IV. of the Children Act.

Wilfully neglecting to attend School.

IX. Section 72 of the Children Act shall, in its application

to day industrial schools, take effect with modifications as follows :—

(1) If a child, of the age of twelve years or upwards, sent to a certified day industrial school under a detention order wilfully neglects to attend thereat, he may at any time before the expiration of his period of detention be brought before a petty sessional court, and the court, if satisfied on inquiry that it is expedient so to deal with the child, may order him to be sent to a certified industrial school to be there detained subject and according to the provisions of Part IV. of the Children Act.

(2) If any person—

(a) knowingly assists or induces directly or indirectly a child sent to a certified day industrial school not to attend thereat ;

(b) knowingly harbours, conceals, or prevents from returning to school, a child who has neglected to attend the school, or knowingly assists in so doing ;

he shall, on summary conviction, be liable to be imprisoned for any term not exceeding fourteen days, with or without hard labour, or to a fine not exceeding five pounds.

Reception of Child under Attendance Order or without Order.

X. Whereas it is enacted by section 79 of the Children Act as follows :—

“The managers of a certified day industrial school may, upon the request of a local education authority and of the parent or guardian of, or other person legally liable to maintain, a child, and upon the undertaking of the parent, guardian, or other person, to pay towards the industrial training and meals of the child such sum as a Secretary of State may authorize, receive the child into the school under an attendance order or without an order of a court.”

And whereas by the 11th section of the Elementary Education Act, 1876, it is enacted in effect that any child under an attendance order requiring him to attend a certified day school shall attend that school every time that the school is open, or in any other regular manner as is specified in the order :

It is hereby ordered, with respect to an attendance order requiring attendance in a certified day industrial school, that the following provisions shall apply :

(a) The school shall be some certified day industrial school, the managers of which are willing to receive the child, which is within two and a half miles of the residence of the child ;

(b) The attendance order shall specify the period for which the child is to attend the school, being such period as to the court seems proper, but not in any case extending beyond the time when the child will attain the age of fourteen years;

(c) The undertaking of the parent may be made in the form set forth in Schedule A* hereto: and

* *Post*,
p. 1162.

It is further ordered with respect to a child received without an order of a court that the undertaking of the parent shall specify the religious persuasion to which the child belongs, and may be made in the form set forth in Schedule B† thereto.

† *Post*.
p. 1162.

Contribution by Parents.

XI. Whereas by section 82 of the Children Act, 1908, it is enacted as follows:—

“(1) Where a court orders a child to be sent to a certified day industrial school, the court shall also order the parent of the child, or other person liable to maintain him, to contribute to his industrial training and meals in the school such sum as is named in the order, not exceeding such sum as may be declared by Order in Council to represent approximately the average cost of industrial training and meals in day industrial schools in the locality in which the school to which the child is sent is situate.

“(2) It shall be the duty of the local education authority to obtain and enforce the order, and every sum paid under the order shall be paid over to the local education authority in aid of their expenses for elementary education under the Education Acts, 1870 to 1907.”

It is hereby declared that the following sums represent approximately the average cost of industrial training and meals in day industrial schools in the localities specified:—

	<i>s.</i>	<i>d.</i>
Schools in London, Leeds, and Bristol . . .	2	0 a week.
Schools in other towns in England . . .	1	9 „

XII. Section 75 of the Children Act shall, in its application to day industrial schools, take effect with modifications as follows:—

(1) Every order requiring a parent or other person to contribute to the industrial training and meals of a child ordered to be sent to a day industrial school may specify the time during which the payment is to be made, or may direct the payment to be made until further order, and shall be enforceable as an order of affiliation.

(2) Any such order may, on application being made either by the person on whom the order is made or at the instance of the local education authority, and on fourteen days' notice of such application being given to such authority or person on whom the order was made, be varied by any court which would have had power to make the order.

(3) Any such order shall be binding on the person on whom it is made :

Provided that if that person was not summoned to attend the sitting of the court at which the order was made, the order shall be served on him in manner prescribed by rules of court, and shall be binding on him unless he makes an application against it within the time prescribed by rules of court to the court by which the order was made, on the ground that he is not liable to maintain the child, and on any such application being made the court may confirm the order with or without modifications or may rescind it.

(4) Where a parent or other person has been so ordered to contribute to the industrial training and meals of a child, he shall give notice of any change of address to the local education authority, and if he fails to do so, without reasonable excuse, he shall be liable on summary conviction to a fine not exceeding two pounds.

(5) The local education authority may in their discretion remit wholly or partially any payment ordered to be made under this section.

(6) Where there is some person, other than the parent, for the time being liable to maintain a child, such an order as aforesaid may be made on that person notwithstanding that there may be also a parent.

(7) Any court making an order for contribution by a parent or other such person may, in any case where there is any pension or income payable to such parent or other person and capable of being attached, after giving the person by whom the pension or income is payable an opportunity of being heard, further order that such part as the court may see fit of the pension or income be attached and be paid to the person named by the court. Such further order shall be an authority to the person by whom such pension or other income is payable to make the payment so ordered, and the receipt of the person to whom the payment is ordered to be made shall be a good discharge to such first-named person.

XIII. Section 88 (6) of the Children Act shall, in its application to day industrial schools, take effect with modifications as follows :—

A certificate purporting to be under the hand of the

superintendent of the day industrial school or an officer of the managers, stating that any sum due from a parent or other person for the maintenance of a child is overdue and unpaid shall be evidence of the facts stated therein.

SCHEDULE A.

Undertaking of Parent in the case of an Attendance Order.

Whereas a complaint has been made under the 11th section of the Elementary Education Act, 1876, against *A.B.* of , a child under the age of 14 years, with a view to an order being made requiring him to attend a certified efficient school, and whereas I, *C.D.* , am the parent of the said *A.B.* , I hereby undertake that if an attendance order be made requiring him to attend the certified day industrial school at , I will pay to the managers of the said school toward the industrial training and meals of the said *A.B.* in the said school the sum of per week so long as such attendance order is in force.

Dated day of , 19 . (Signed)

SCHEDULE B.

Undertaking of Parent in the case of a Child about to attend a School without any Order of Court.

I, *C.D.* , of , being the parent of *A.B.* , a child under 14 years of age, and of the religious persuasion of , hereby undertake to pay to the managers of the certified day industrial school at towards the industrial training and meals of the said *A.B.* in the said school the sum of per week for the term of , and for such further terms as may be agreed upon between myself and the said managers and the local education authority.

Dated day of 19 . (Signed)

THE MOTOR CAR (REGISTRATION AND LICENSING) ORDER, 1903.

DATED NOVEMBER 19, 1903.

To the county councils of the several administrative counties in England and Wales ;—

To the councils of the several county boroughs in England and Wales ;—

And to all others whom it may concern.

Whereas by section 6 of the Locomotives on Highways Act, 1896 (hereinafter referred to as "the act of 1896"), it is enacted that—

"(1) The Local Government Board may make regulations with respect to the use of light locomotives on highways, and their construction, and the conditions under which they may be used.

"(2) * * * * *

"All regulations under this section shall have full effect notwithstanding anything in any other act, whether general or local, or any byelaws or regulations made thereunder."

And whereas by section 7 of the act of 1896 it is enacted that—

"A breach of any * * * regulation made under this act, * * * may, on summary conviction, be punished by a fine not exceeding ten pounds."

And whereas by section 2 of the Motor Car Act, 1903 (herein-after referred to as "the act of 1903"), it is enacted that—

"(1) Every motor car shall be registered with the council of a county or county borough, and every such council shall assign a separate number to every car registered with them.

"(2) A mark indicating the registered number of the car and the council with which the car is registered shall be fixed on the car or on a vehicle drawn by the car, or on both, in such manner as the council require in conformity with regulations of the Local Government Board made under this act.

"(3) A fee of twenty shillings shall be charged by the council of a county or county borough on the registration of a car, except in the case of motor cycles, for which the fee shall be five shillings.

“(4) If a car is used on a public highway without being registered, or if the mark to be fixed in accordance with this act is not so fixed, * * * the person driving the car shall be guilty of an offence under this act,
* * * :

“Provided that—

“(a) A person shall not be liable to a penalty under this section if he proves that he has had no reasonable opportunity of registering the car in accordance with this section, and that the car is being driven on a highway for the purpose of being so registered ; and

“(b) The council of any county or county borough in which the business premises of any manufacturer of, or dealer in, motor cars are situated, may, on payment of such annual fee, not exceeding three pounds, as the council require, assign to that manufacturer or dealer a general identification mark which may be used for any car on trial after completion, or on trial by an intending purchaser, and a person shall not be liable to a penalty under this section while so using the car if the mark so assigned is fixed upon the car in the manner required by the council in accordance with regulations of the Local Government Board made under this act.”

And whereas by section 3 of the act of 1903 it is enacted that—

“ * * * * *

“(2) The council of a county or county borough shall grant a licence to drive a motor car to any person applying for it who resides in that county or county borough on payment of a fee of five shillings, unless the applicant is disqualified under the provisions of this act.

“(3) A licence shall remain in force for a period of twelve months from the date on which it is granted, but shall be renewable, and the same provisions shall apply with respect to the renewal of the licence as apply with respect to the grant of the licence.

“ * * * * *

“(5) Any person under the age of seventeen years shall be disqualified for obtaining a licence (except that a licence limited to driving motor cycles may be granted to a person over the age of fourteen years), and any person who already holds a licence shall be disqualified for obtaining another licence while the licence so held by him is in force.”

And whereas by section 7 of the act of 1903 it is enacted that—

“(1) The Local Government Board may, under section six of the Locomotives on Highways Act, 1896, * * * make regulations—

“(a) providing generally for facilitating the identification of motor cars and in particular for determining, and regulating generally the size, shape, and character of the identifying marks to be fixed under this act, and the mode in which they are to be fixed and to be rendered easily distinguishable whether by night or by day, and with respect to the registration of cars, and the entry of particulars, including particulars of the ownership of the car, in the register, and the giving of those particulars, and for making any particulars contained in the register available for use by the police, and for making the registration of a car void if the regulations as to registration are not complied with; and

“(b) with respect to the licences to be granted by the councils of counties or county boroughs under this act, and in particular with respect to the register to be kept of those licences and the renewal of licences, and for providing special facilities for granting licences to persons not resident in the United Kingdom, and for communicating particulars thereof to adjoining and other county or county borough councils, and for making any particulars with respect to any persons whose licences are suspended or endorsed available for use by the police, and for preventing a person holding more than one licence.

“(2) The councils of counties and county boroughs shall comply with any regulations so made by the Local Government Board, and may if authorised by those regulations and in accordance therewith charge in respect of the entry of particulars of the ownership of a car on change of ownership such fee, not exceeding ten shillings, as may be prescribed by the regulations, and in respect of the issue of a new licence in the place of a licence lost or defaced such fee not exceeding one shilling as may be prescribed by the regulations.”

Now, therefore, in pursuance of the powers given to us by the act of 1896 and the act of 1903, and by any other statutes in that behalf, we, the Local Government Board, do by this our order make the following regulations, and direct that the

same shall have effect for the purpose of bringing the act of 1903 into operation and giving effect to that act :—

PART I.

Registration of Motor Cars.

ARTICLE I.—The council of every county and the council of every county borough shall establish and keep a register (herein-after referred to as “the register of motor cars”) for the registration of motor cars.

P. 1172.

The index mark distinguishing the council of the county or county borough with which a motor car is registered shall, as respects the council of each county or county borough, be the letter or letters shown opposite to the name of that council in Part I. of the first schedule to this order.

P. 1176.

The register of motor cars shall be in the form set out in the second schedule to this order, or in a form to the like effect.

The council of any county or county borough may, if they think fit, keep the register of motor cars in two parts, one part relating to motor cars not being motor cycles, and the other part relating to motor cycles.

P. 1177.

ARTICLE II.—The owner of a motor car who desires to register it with the council of any county or county borough shall apply to the council, and shall furnish them with the particulars set out in the form in the third schedule to this order. A fee of twenty shillings in the case of a motor car not being a motor cycle, or of five shillings in the case of a motor cycle, being the fee prescribed by the act of 1903, shall be paid before the motor car can be registered.

ARTICLE III.—The council, on receipt of any such application, and the particulars and fees above referred to, shall forthwith assign a separate number of the motor car, and register it by making the required entries in the register of motor cars. The council, on the registration of a motor car, shall forthwith furnish the owner of the motor car with a copy of the entries in the register relating to the motor car.

ARTICLE IV.—If the ownership of a motor car is changed, notice of the change shall be given either by the new or the old owner to the council with whom the motor car is registered, and an application shall also be made either to cancel the registration of the car or to continue the existing registration under the new ownership.

If an application is so made to cancel the registration of the motor car, and no application is made to continue the existing

registration of the car, the registration of the car shall be cancelled accordingly, but if an application is made to continue the existing registration of the car, the new owner shall furnish the necessary particulars as to ownership, and on receipt of a fee of five shillings in the case of a motor car not being a motor cycle, or of one shilling in the case of a motor cycle (which fees the council are hereby authorised to charge), the council shall cause the necessary alterations to be made in the register of motor cars, and shall furnish the new owner with a copy of the altered entries in the register.

Any notice may be given or application or alteration made under this article before the date of the actual change of ownership so as to take effect from that date.

If the provisions of this article as to notice and application are not complied with, the registration of the motor car shall be void.

ARTICLE V.—If any circumstances (other than a change of ownership dealt with in the preceding article) occurs in relation to any motor car which affects the accuracy of any particulars entered as respects that car in the register of motor cars, the owner of the motor car shall forthwith inform the council with whom it has been registered, and on receipt of such information, the council shall forthwith cause the entries respecting that motor car in the register of motor cars to be amended accordingly, and shall furnish the owner with a copy of the entries as so amended. No fee shall be charged by the council in respect of any amendment of entries or transmission of a copy of entries under this article.

ARTICLE VI.—If the council are satisfied that a motor car which has been registered with them is destroyed, broken up, or permanently removed from the United Kingdom, or registered with another registering authority under the act of 1903, or if the owner of a registered motor car by application in writing requests them to cancel the registration thereof (except where in the case of a change of ownership, there is an application to continue the existing registration) they shall cause the entries in the register of motor cars with respect to the motor car to be cancelled, and may, if they think fit, assign the registered number of the motor car to any other motor car whether belonging to the same or any other owner.

ARTICLE VII.—The mark to be carried by a registered motor car, in pursuance of section 2 of the Act of 1903 (in this order referred to as the identification mark), shall consist of two plates which must conform as to lettering, numbering, and otherwise, with the provisions set out in the fourth schedule to this order. P. 1178.

Designs, painted or otherwise, shown upon the motor car may, if it is desired, be used instead of plates, and any reference to plates in this order shall be construed to include a reference to such designs, and any reference to the fixing of plates to include a reference to the painting or other delineation of the designs.

ARTICLE VIII.—The plates forming the identification mark shall be fixed, one on the front of, and the other on the back of, the motor car, in an upright position, so that every letter or figure on the plate is upright and easily distinguishable, in the case of the plate placed on the front of the motor car, from in front of the car, and, in the case of the plate placed on the back of the motor car, from behind the car.

In the case of a motor tricycle or motor bicycle of a weight unladen not exceeding three hundredweights, the plates fixed on the front of the cycle may, if it is a plate having duplicate faces conforming with the fourth schedule to this order, be fixed so that from whichever side the cycle is viewed the letters or figures on one or other face of the plate are easily distinguishable, though they may not be distinguishable from the front of the cycle.

Subject to the provisions of this article, the plates forming the identification mark shall be fixed on the motor car in the position indicated in the particulars given on the application for the registration of the motor car, or subsequently furnished to the registering council, or if that council are not satisfied with the position so indicated, in such a position as they direct.

So long as the provisions of this order are complied with, different identification plates may be used on a motor car by day and night or on different occasions.

ARTICLE IX.—When another vehicle is attached to a motor car, either in front or behind, the plate required to be fixed on the front or on the back of the motor car, or a duplicate of such plate, shall be fixed on the front or on the back of the vehicle attached, as the case requires, in the same manner as the plate is required to be fixed upon the motor car.

ARTICLE X.—A council with whom a motor car is registered may, if they think fit, supply to the owner of the car, if he so desires, the plates forming the identification mark on the car, and make a charge for them.

ARTICLE XI.—Whenever during the period between one hour after sunset and one hour before sunrise a motor car is used on a public highway, a lamp shall be kept burning on the car, so contrived as to illuminate by means of reflection, transparency, or otherwise, and render easily distinguishable

every letter or figure on the identification plate fixed on the back of the motor car or of any vehicle attached to the back of the motor car, as the case may be.

In the application of this article to a motor tricycle or motor bicycle of a weight unladen not exceeding three hundredweights, the plate fixed on the front of the motor car may, if desired, be substituted for the plate fixed on the back of the motor car.

ARTICLE XII.—If the council of any county or county borough assign to a manufacturer or dealer a general identification mark under proviso (b) to subsection (4) of section 2 of the Act of 1903, the mark shall be such as the council direct in each case. Provided that—

- (a) It shall consist of two plates, each bearing the index mark of the council and some other distinguishing letter or letters; and each having placed thereon or annexed thereto some distinguishing number; and
- (b) The colouring of the plates shall be different from that used for the plates forming the ordinary identification mark; and
- (c) The lettering and numbering of the plates shall, so far as possible, be similar to those required in the case of the plates forming the ordinary identification mark.

On every occasion on which the general identification mark is used on a motor car, the manufacturer or dealer shall keep a record of the distinguishing number placed on or annexed to the identification plates on that occasion, and of the name and address of the person driving the motor car on that occasion, and that record shall be open to inspection by the council or by any superior officer of police or constable authorised by such an officer.

If the general identification mark is used at the same time on more than one motor car, the distinguishing number placed on or annexed to the plates must be different on each motor car.

The provisions of this order which relate to the fixing and illumination of identification plates shall apply to the plates forming the general identification mark as they apply to the plates forming the ordinary identification mark.

The council shall keep a register of any general identification marks so assigned by them which shall contain the following particulars :—

- (a) the name of the manufacturer or dealer to whom the general identification mark is assigned;
- (b) the place of business of the manufacturer or dealer; and
- (c) a description of the general identification mark assigned to him.

ARTICLE XIII.—The council shall, upon application being made to them by any other registering authority under the act of 1903, or by any police authority, or by any superior officer of police or constable authorised by such an officer, forthwith provide, free of charge, a copy of the entries in their register of motor cars relating to any specified motor car, or of the entries in their register of general identification marks relating to any specified manufacturer or dealer. The council shall also supply to any other person applying for a copy of the entries relating to any specified motor car, a copy of those entries on payment of a fee of one shilling, if he shows that he has a reasonable cause for requiring such a copy.

An officer of the inland revenue department may, without charge, at all reasonable times inspect the register of motor cars and take copies of any entries in it.

PART II.

Licences.

ARTICLE XIV.—A person who desires to obtain the grant or renewal of a licence to drive a motor car or of a licence limited to driving motor cycles under the act of 1903 shall apply to the council of the county or county borough in which he resides, and furnish them with the particulars set out in Form A. or Form B. in the fifth schedule to this order as the case requires.

Pp. 1180, 1181.

The fee of five shillings prescribed by the act of 1903 shall be paid before the applicant is entitled to receive the licence or renewal.

Applications for the grant or renewal of a licence may be received and dealt with at any time within one month before the date on which the grant or renewal of the licence is to take effect.

P. 1182.

ARTICLE XV.—The licence and renewal of a licence shall respectively be in the form set out for the purpose in the sixth schedule to this order or in a form to the like effect.

ARTICLE XVI.—If any person applies to the council of a county or county borough for the grant of a licence, and the council are satisfied that he has no residence in the United Kingdom, the council shall, if the applicant is otherwise entitled, grant him a licence, notwithstanding that he is not resident within their county or county borough.

ARTICLE XVII.—If a person to whom a licence has been granted by the council of a county or county borough satisfies that council that his licence or any renewal of it has been lost

or defaced, the council shall, on payment of a fee of one shilling, issue to him a duplicate licence, or renewal (including, in the case of a duplicate licence, any particulars endorsed or entered upon the original licence under the act of 1903 or this order), and the duplicate so issued shall have the same effect as the original licence or renewal, as the case may be.

ARTICLE XVIII.—The council of every county or county borough shall establish and keep a register of licences in the form set out in the seventh schedule to this order, or in a form P. 1183. to the like effect.

ARTICLE XIX.—Any registering council shall upon application being made to them by any other licensing authority under the act of 1903, or by any police authority, or by any superior officer of police or constable authorised by such officer forthwith provide free of charge a copy of the particulars in their register of licences relating to any licence granted by them.

Upon receiving from any court in pursuance of section 4 of the act of 1903 particulars of any conviction of the holder of a licence granted by the council, and of the order of the court in the case, the council shall cause a copy of such particulars and order to be sent, free of charge, to the police authority for the area in which the holder of the licence resides.

PART III.

Supplemental.

ARTICLE XX.—The clerk of the council and any other officer authorised by the council are respectively empowered to perform any duty or exercise any power of the council for the purpose of carrying this order into effect.

ARTICLE XXI.—The provisions of this order shall apply in the case of a roadway to which the public are granted access in the same manner as they apply in the case of a public highway.

Except where the contrary intention appears, the expression “motor car” in this order includes a motor cycle.

In calculating for the purpose of this order the weight of a motor car or motor cycle unladen, the weight of any water, fuel, or accumulators used for the purpose of propulsion shall not be included.

The Interpretation Act, 1889, applies for the purpose of the interpretation of this order as it applies for the purpose of the interpretation of an act of parliament.

ARTICLE XXII.—This order may be cited as the Motor Car (Registration and Licensing) Order, 1903.

FIRST SCHEDULE.

PART I.

Registering Council.	Index Mark.	Registering Council.	Index Mark.	
1.	2.	1.	2.	
London County Council .	A.	County Council of Monmouth	A.X.	
County Council of Lancaster	B.	County Council of Leicester .	A.Y.	
County Council of the West Riding of Yorkshire.	C.	Council of the County Borough of Salford.	B.A.	
County Council of Kent .	D.	Council of the County Borough of Newcastle-upon-Tyne.	B.B.	
County Council of Stafford .	E.	Council of the County Borough of Leicester.	B.C.	
County Council of Essex .	F.	County Council of Northampton.	B.D.	
County Council of Middlesex	H.	County Council of the Parts of Lindsey.	B.E.	
County Council of Durham .	J.	County Council of Dorset .	B.F.	
Council of the County Borough of Liverpool.	K.	County Council of Bucks .	B.H.	
County Council of Glamorgan	L.	County Council of East Suffolk.	B.J.	
County Council of Chester .	M.	Council of the County Borough of Portsmouth.	B.K.	
Council of the County Borough of Manchester.	N.	County Council of Berks .	B.L.	
Council of the County Borough of Birmingham.	O.	County Council of Bedford .	B.M.	
County Council of Surrey .	P.	Council of the County Borough of Bolton.	B.N.	
County Council of Derby .	R.	W.	Council of the County Borough of Cardiff.	B.O.
County Council of Devon .	T.	X.	County Council of West Sussex.	B.P.
Council of the County Borough of Leeds.	U.	Y.	Council of the County Borough of Sunderland.	B.R.
Council of the County Borough of Sheffield.	W.	A.A.	County Council of the East Riding of Yorkshire.	B.T.
County Council of Northumberland.	X.	A.B.	Council of the County Borough of Oldham.	B.U.
County Council of Somerset .	Y.	A.C.	County Council of Oxford .	B.W.
County Council of Southampton.	A.A.	A.D.	County Council of Carmarthen.	B.X.
County Council of Worcester	A.B.	A.E.	Council of the County Borough of Croydon.	B.Y.
County Council of Warwick .	A.C.	A.F.	County Council of Denbigh .	C.A.
County Council of Gloucester	A.D.	A.H.	Council of the County Borough of Blackburn.	C.B.
Council of the County Borough of Bristol.	A.E.	A.J.	County Council of Carnarvon	C.C.
County Council of Cornwall .	A.F.	A.K.	Council of the County Borough of Brighton.	C.D.
County Council of Norfolk .	A.H.	A.L.	County Council of Cambridge	C.E.
County Council of the North Riding of Yorkshire.	A.J.	A.M.	County Council of West Suffolk.	C.F.
Council of the County Borough of Bradford (Yorkshire).	A.K.	A.N.	Council of the County Borough of Derby.	C.H.
County Council of Nottingham	A.L.	A.O.	County Council of Hereford .	C.J.
County Council of Wilts .	A.M.	A.P.	Council of the County Borough of Preston.	C.K.
Council of the County Borough of West Ham.	A.N.	A.R.	Council of the County Borough of Norwich.	C.L.
County Council of Cumberland.	A.O.	A.T.		
County Council of East Sussex	A.P.	A.U.		
County Council of Hertford .	A.R.	A.W.		
Council of the County Borough of Kingston-upon-Hull.	A.T.			
Council of the County Borough of Nottingham.	A.U.			
County Council of Salop .	A.W.			

Registering Council.	Index Mark.	Registering Council.	Index Mark.
1.	2.	1.	2.
Council of the County Borough of Birkenhead.	C.M.	County Council of the Isle of Ely.	E.B.
Council of the County Borough of Gateshead.	C.N.	County Council of Westmorland.	E.C.
Council of the County Borough of Plymouth.	C.O.	Council of the County Borough of Warrington.	E.D.
Council of the County Borough of Halifax.	C.P.	Council of the County Borough of Grimsby.	E.E.
Council of the County Borough of Southampton.	C.R.	Council of the County Borough of West Hartlepool.	E.F.
County Council of the Parts of Kesteven.	C.T.	Council of the County Borough of Hanley.	E.H.
Council of the County Borough of South Shields.	C.U.	County Council of Cardigan.	E.J.
Council of the County Borough of Burnley.	C.W.	Council of the County Borough of Wigan.	E.K.
Council of the County Borough of Huddersfield.	C.X.	Council of the County Borough of Bournemouth.	E.L.
Council of the County Borough of Swansea.	C.Y.	Council of the County Borough of Bootle.	E.M.
Council of the County Borough of Wolverhampton.	D.A.	Council of the County Borough of Bury.	E.N.
Council of the County Borough of Stockport.	D.B.	Council of the County Borough of Barrow-in-Furness.	E.O.
Council of the County Borough of Middlesbrough.	D.C.	County Council of Montgomery.	E.P.
County Council of Pembroke.	D.E.	Council of the County Borough of Rotherham.	E.T.
Council of the County Borough of Northampton.	D.F.	County Council of Brecknock.	E.U.
Council of the County Borough of Walsall.	D.H.	County Council of Huntingdon.	E.W.
Council of the County Borough of St. Helens.	D.J.	Council of the County Borough of Great Yarmouth.	E.X.
Council of the County Borough of Rochdale.	D.K.	County Council of Anglesey.	E.Y.
County Council of the Isle of Wight.	D.L.	Council of the County Borough of Burton-upon-Trent.	F.A.
County Council of Flint.	D.M.	Council of the County Borough of Bath.	F.B.
Council of the County Borough of York.	D.N.	Council of the County Borough of Oxford.	F.C.
County Council of the Parts of Holland.	D.O.	Council of the County Borough of Dudley.	F.D.
Council of the County Borough of Reading.	D.P.	Council of the County Borough of Lincoln.	F.E.
Council of the County Borough of Devonport.	D.R.	County Council of Merioneth.	F.F.
Council of the County Borough of Coventry.	D.U.	Council of the County Borough of Gloucester.	F.H.
Council of the County Borough of Newport (Monmouth).	D.W.	Council of the County Borough of Exeter.	F.J.
Council of the County Borough of Ipswich.	D.X.	Council of the County Borough of Worcester.	F.K.
Council of the County Borough of Hastings.	D.Y.	County Council of the Soke of Peterborough.	F.L.
Council of the County Borough of West Bromwich.	E.A.	Council of the County Borough of Chester.	F.M.
		Council of the County Borough of Canterbury.	F.N.
		County Council of Radnor.	F.O.
		County Council of Rutland.	F.P.

PART II.

Counties and County Boroughs arranged in Alphabetical Order
with Index Marks.

Counties.	Index Mark.	Counties.	Index Mark.
1.	2.	1.	2.
Anglesey	E.Y.	Suffolk, West	C.F.
Bedfordshire	B.M.	Surrey	P.
Berkshire	B.L.	Sussex, East	A.P.
Breconshire	E.U.	Sussex, West	B.P.
Buckinghamshire	B.H.	Warwickshire	A.C.
Cambridgeshire	C.E.	Westmorland	E.C.
Cardiganshire	E.J.	Wight, Isle of	D.L.
Carmarthenshire	B.X.	Wiltshire	A.M.
Carnarvonshire	C.C.	Worcestershire	A.B.
Cheshire	M.	Yorkshire (East Riding)	B.T.
Cornwall	A.F.	Yorkshire (North Riding)	A.J.
Cumberland	A.O.	Yorkshire (West Riding)	C.
Denbighshire	C.A.		
Derbyshire	R.		
Devonshire	T.	COUNTY BOROUGHs.	
Dorset	B.F.	Barrow-in-Furness	E.O.
Durham	J.	Bath	F.B.
Ely, Isle of	E.B.	Birkenhead	C.M.
Essex	F.	Birmingham	O.
Flintshire	D.M.	Blackburn	C.B.
Glamorganshire	L.	Bolton	B.N.
Gloucestershire	A.D.	Bootle	E.M.
Herefordshire	C.J.	Bournemouth	E.L.
Hertfordshire	A.R.	Bradford (Yorkshire)	A.K.
Huntingdonshire	E.W.	Brighton	C.D.
Kent	D.	Bristol	A.E.
Lancashire	B.	Burnley	C.W.
Leicestershire	A.Y.	Burton-upon-Trent	F.A.
Lincolnshire, Parts of Holland	D.O.	Bury	E.N.
Lincolnshire, Parts of Kes-	C.T.	Canterbury	F.N.
ten.		Cardiff	B.O.
Lincolnshire, Parts of Lindsey	B.E.	Chester	F.M.
London	A.	Coventry	D.U.
Merionethshire	F.F.	Croydon	B.Y.
Middlesex	H.	Derby	C.H.
Monmouthshire	A.X.	Devonport	D.R.
Montgomeryshire	E.P.	Dudley	F.E.
Norfolk	A.H.	Exeter	F.J.
Northamptonshire	B.D.	Gateshead	C.N.
Northumberland	X.	Gloucester	F.H.
Nottinghamshire	A.L.	Great Yarmouth	E.X.
Oxfordshire	B.W.	Grimsby	E.E.
Pembrokeshire	D.E.	Halifax	C.P.
Peterborough, Soke of	F.L.	Hanley	E.H.
Radnorshire	F.O.	Hastings	D.Y.
Rutland	F.P.	Huddersfield	C.X.
Salop	A.W.	Ipswich	D.X.
Somerset	Y.	Kingston-upon-Hull	A.T.
Southampton	A.A.	Leeds	U.
Staffordshire	E.	Leicester	B.C.
Suffolk, East	B.J.		

County Boroughs.	Index Mark.	County Boroughs.	Index Mark.
1.	1.	1.	2.
Lincoln	F.E.	St. Helens	D.J.
Liverpool	K.	Salford	R.A.
Manchester	N.	Sheffield	W.
Middlesbrough	D.C.	Southampton	C.R.
Newcastle-upon-Tyne	B.B.	South Shields	C.U.
Newport (Monmouth)	D.W.	Stockport	D.B.
Northampton	D.F.	Sunderland	B.R.
Norwich	C.L.	Swansea	C.Y.
Nottingham	A.U.	Walsall	D.H.
Oldham	B.U.	Warrington	E.D.
Oxford	F.C.	West Bromwich	E.A.
Plymouth	C.O.	West Ham	A.N.
Portsmouth	B.K.	West Hartlepool	E.F.
Preston	C.K.	Wigan	E.K.
Reading	D.P.	Wolverhampton	D.A.
Rochdale	D.K.	Worcester	F.K.
Rotherham	E.T.	York	D.N.

SECOND SCHEDULE.

Register of Motor Cars.

COUNTY [or COUNTY BOROUGH] of _____

Index Mark and Number on Identifi- cation Plates.	Full Name of Owner and Postal Address of his usual Residence.	Description or Type of Car.	(*) Type and Colour of Body of Car.	Weight unladen.	Whether intended for—			Date of Registration.	If Cancelled, Date of Cancellation.
					(a) Private use.	(b) Use for Trade Purposes.	(c) Use as a Public Conveyance.		
1.	2.	3.	4.	5.				7.	8.

(*) In the case of a motor cycle this column will not be filled in.

THIRD SCHEDULE.

*Form of particulars to be given by Applicant for Registration
of a Motor Car.*

COUNTY [or COUNTY BOROUGH] of

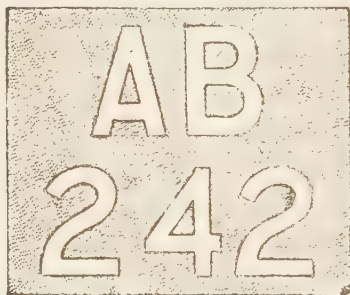
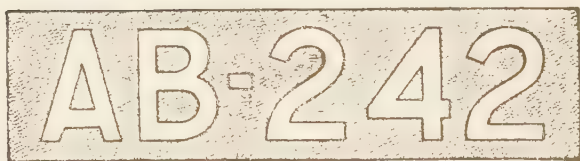
1. Full name of owner.	
2. Postal address of usual residence of owner.	
3. Description or type of car (a).	
4.—(b) Type and colour of body of car (c).	
5. Weight unladen.	
6. Whether intended for— (a) Private use, or (b) Use for trade purposes, or (c) Use as a public conveyance.	
7. Particulars as to the position on the car in which it is proposed to place the plates forming the identification mark.	

*Signature of owner or person }
applying on his behalf. }*

Date of Application.

- (a) *e.g.*, a 12-h.p. car, or a steam lorry, or electric brougham, or motor bicycle, with the addition in each case, of the name of the maker, or name by which the type is ordinarily known.
- (b) In the case of a motor cycle, particulars under this head need not be given.
- (c) *e.g.*, tonneau body painted yellow, or dog cart body painted black picked out with red, or van body painted blue with the name of the firm upon it.

FOURTH SCHEDULE.

Alternative Diagram No. 1.*Alternative Diagram No. 2.*

The alternative diagrams above are specimen plates drawn approximately to a scale of * one-third. The actual size of the plates will, however, differ according to the number of letters and figures required.

* The scale as here shown is one-sixth.

Provisions to be complied with.

(1.) Each plate must be rectangular and bear upon it the index mark of the Council with whom the motor car is registered, and the separate number assigned to the motor car by that Council, the mark and number being arranged in conformity with the arrangement of letters and figures shown on one or other of the alternative diagrams.

(2.) The two plates may, at the option of the owner, be of either of the shapes shown in the alternative diagrams, or one of one shape and one of the other.

(3.) The ground of the plate must be black, the letters and figures must be white.

(4.) All letters and figures must be three-and-a-half inches high; every part of every letter and figure must be five-eighths of an inch broad; and the total width of the space taken by every letter or figure, except in the case of the figure 1, must be two-and-a-half inches.

(5.) The space between adjoining letters and between adjoining figures must be half-an-inch, and there must be a margin between the nearest part of any letter or figure and the top and bottom of the plate of at least half-an-inch, and between the nearest part of any letter or figure and the sides of the plate of at least one inch.

(6.) In the alternative diagram No. 1, the space between the upper and lower line must be three-quarters of an inch. In the alternative diagram No. 2, the space between the letters and the figures must be one-and-a-half inches.

(7.) In the case of the plates for a motor tricycle or motor bicycle of a weight unladen not exceeding three hundredweights, each of the dimensions mentioned above must be halved, and the shape of the plate need not be rectangular so long as the *minimum* margin between any letter or figure and the top, bottom, and sides of the plate is preserved.

FIFTH SCHEDULE.

FORM A.

Particulars to be given by Applicant for Licence.

COUNTY [or COUNTY BOROUGH] of

1. Full name of applicant.	
2. Postal address of residence of applicant.	
3. Whether application is for licence to drive a motor car, or for licence limited to driving motor cycles.	
4. Whether applicant is less than seventeen years of age, or in the case of an application limited to driving motor cycles, whether he is less than fourteen years of age.	
5. Whether applicant is the holder of a licence, or has at any time previously been the holder of a licence.	
6. Particulars of any licence which the applicant holds or which he has previously held.	
7. Particulars of any indorsement on any licence which the applicant holds or which he has previously held.	
8. Whether applicant has at any time been disqualified for obtaining a licence. If so, particulars as to the court by whom the date on which, and the period for which the disqualification was imposed.	

*Signature of Applicant**Date of Application*

FORM B.

Particulars to be given by Applicant for Renewal of Licence.

COUNTY [or COUNTY BOROUGH] of

1. Number of the licence.	
2. Postal address of residence of applicant.	
3. Whether applicant has, since date of last grant or renewal of the licence, been disqualified for obtaining a licence.	

Signature of Applicant

Date of Application

SIXTH SCHEDULE.

Form of Licence.

No.

MOTOR CAR ACT, 1903.

County
or
County Borough } of

LICENCE TO DRIVE A MOTOR CAR (*or* MOTOR CYCLE).

A.B., of _____, is hereby licensed to drive a
MOTOR CAR (*or* MOTOR CYCLE only) for the period of twelve
months from the _____ day of _____ until the _____ day of
_____ inclusive.

Clerk to the County Council
or Town Clerk *or* duly authorised Officer.

N.B.—Particulars of any endorsement of any licence previously
held by the person licensed must be entered on the back of this
licence.

Form of Renewal of Licence.

This licence (Licence No.* _____, granted by the Council of the
County [or County Borough] of _____, under the Motor Car
Act, 1903) is hereby renewed, so as to be in force for twelve
months from the _____ day of _____ until the _____ day of
_____ inclusive.

Clerk to the County Council
or Town Clerk *or* duly authorised Officer.

* NOTE.—If the holder of the licence furnishes the County Council
with his licence for the purpose, the renewal must be entered upon the
licence. It will otherwise be a separate document.

SEVENTH SCHEDULE.

Register of Licences.

COUNTY [or COUNTY BOROUGH] of

Number of Licence. 1.	Full Name of Licensee. 2.	Postal Address of Residence of Licensee. 3.	Whether 4. (a) To drive a Motor Car. (b) Limited to driving Motor Cycles.		Date of Grant and of Expiration. 5.	Particulars of Renewals 6.	Particulars of any Endorsements on the Licence entered in pur- suance of the Motor Car Act, 1903, or the Motor Car (Registration and Licensing) Order, 1903. 7.

Given under the Seal of Office of the Local Government Board,
this Nineteenth day of November, in the year One thousand
nine hundred and three.

(L.S.)

S. B. PROVIS,
Secretary.

WALTER H. LONG,
President.

THE MOTOR CARS ORDER, 1904.

USE OF MOTOR CARS ON HIGHWAYS.

THE MOTOR CARS (USE AND CONSTRUCTION) ORDER, 1904.
DATED MARCH 9, 1904.

To the county councils of the several administrative counties in England and Wales ;—

To the mayor, aldermen and commons of the city of London in common council assembled ;—

To the councils of the several county boroughs in England and Wales ;—

To the councils of the several metropolitan boroughs ;—

To the urban district councils of the several urban districts in England and Wales ;—

To the rural district councils acting as the highway authorities in rural districts in England and Wales ;—

And to all others whom it may concern.

Whereas by section 6 of the Locomotives on Highways Act, 1896 (herein-after referred to as "the act of 1896"), it is enacted that—

"(1) The Local Government Board may make regulations with respect to the use of light locomotives on highways, and their construction, and the conditions under which they may be used.

"(2) * * * All regulations under this section shall have full effect notwithstanding anything in any other act, whether general or local, or any bye-laws or regulations made thereunder."

And whereas by section 2 of the act of 1896 it is enacted that—

"During the period between one hour after sunset and one hour before sunrise, the person in charge of a light locomotive shall carry attached thereto a lamp so constructed and placed as to exhibit a light in accordance with the regulations to be made by the Local Government Board."

And whereas by section 7 of the act of 1896 it is enacted that—

"A breach of any * * * regulation made under this act, * * * may, on summary conviction, be punished by a fine not exceeding ten pounds."

And whereas by an Order dated the 9th day of November, 1896, made in pursuance of the act of 1896, we, the Local

Government Board, made regulations with respect to the use of light locomotives on highways and their construction, and the conditions under which they might be used;

And whereas, in consequence of the passing of the Motor Car Act, 1903 (herein-after referred to as "the act of 1903"), it is expedient that the said regulations should be rescinded and that other provision should be made with respect to the use of motor cars on highways, their construction, and the conditions under which they may be used;

And whereas in pursuance of section 7 of the act of 1903 the act of 1896 is referred to as "the principal act," and by sub-section (1) of section 20 of the act of 1903, it is enacted as follows:—

"(1) In this act the expression 'motor car' has the same meaning as the expression 'light locomotive' has in the principal act, as amended by this act, except that for the purpose of the provisions of this act with respect to the registration of motor cars, the expression 'motor car' shall not include a vehicle drawn by a motor car.

"The provisions of this act and of the principal act shall apply in the case of a roadway to which the public are granted access in the same manner as they apply in the case of a public highway."

Now therefore, in pursuance of the powers given to us by the act of 1896 and the act of 1903, and by any other statutes in that behalf, we, the Local Government Board, do hereby rescind the said regulations made by our order dated the ninth day of November, one thousand eight hundred and ninety-six, and do by this our order make the following regulations with respect to the use of motor cars on highways, and their construction, and the conditions under which they may be used:—

ARTICLE I.—In this order—

The expression "carriage" includes a waggon, cart, or other vehicle.

The expression "horse" includes a mule or other beast of draught or burden, and the expression "cattle" includes sheep.

The expression "motor car" means a vehicle propelled by mechanical power which is under* *three tons* in weight unladen, and is not used for the purpose of drawing more than one vehicle (such vehicle with its locomotive not exceeding in weight unladen† *four tons*), and is so

* In case of a "heavy" motorcar, *five tons*, cf. *post*, p. 1192.

† In case of a "heavy" motor car, *six-and-a-half tons*, cf. *post*, p. 1192.

constructed that no smoke or visible vapour is emitted therefrom except from any temporary or accidental cause. In calculating for the purposes of this Order the weight of a vehicle unladen, the weight of any water, fuel, or accumulators used for the purpose of propulsion shall not be included.

The expression "highway" includes any roadway to which the public are granted access.

ARTICLE II.—No person shall cause or permit a motor car to be used on any highway, or shall drive or have charge of a motor car when so used, unless the conditions herein-after set forth are satisfied; namely,—

- (1) The motor car, if it exceeds in weight unladen five hundredweight, shall be capable of being so worked that it may travel either forwards or backwards.
- (2) The motor car shall not exceed seven feet two inches in width, such width to be measured between its extreme projecting points.
- (3) The tire of each wheel of the motor car shall be smooth and shall, where the same touches the ground, be flat and of the width following, namely,—
 - (a) if the weight of the motor car unladen exceeds fifteen hundredweight, but does not exceed one ton, not less than two and a half inches;
 - (b) if such weight exceeds one ton, but does not exceed two tons, not less than three inches;
 - (c) if such weight exceeds two tons, but does not exceed three tons, not less than four inches.

Provided that where a pneumatic tire or other tire of a soft or elastic material is used the conditions herein-before set forth with respect to tires shall not apply.

- (4) The motor car shall have two independent brakes in good working order, and of such efficiency that the application of either to the motor car shall cause two of its wheels on the same axle to be so held that the wheels shall be effectually prevented from revolving, or shall have the same effect in stopping the motor car as if such wheels were so held.

Provided that in the case of a motor car having less than four wheels this condition shall apply as if, instead of two wheels on the same axle, one wheel was therein referred to.

*Cf. Wilmott v. Southwell.**
The fact that the engine may be used to lock the wheels does not constitute it an independent brake.

* (1908) 99 L. T. 839; 7 L. G. R. 8; 25 T. L. R. 22; 72 J. P. 491.

- (5) Where the weight of a motor car unladen exceeds fifteen hundredweight and the motor car is fitted with tires other than pneumatic tires or tires of a soft or elastic material, the weight of the motor car unladen shall be painted in one or more straight lines upon some conspicuous part of the right or off side of the motor car in large legible letters in white upon black or black upon white, not less than one inch in height.
- (6) The motor car and all the fittings thereof shall be in such a condition as not to cause, or to be likely to cause, danger to any person on the motor car or on any highway.
- (7)—(i) The lamp to be carried attached to the motor car in pursuance of section 2 of the act of 1896 shall be so constructed and placed as to exhibit, during the period between one hour after sunset and one hour before sunrise, a white light visible within a reasonable distance in the direction towards which the motor car is proceeding or is intended to proceed, and to exhibit a red light so visible in the reverse direction. The lamp shall be placed on the extreme right or off side of the motor car in such a position as to be free from all obstruction to the light.

Provided that where a lamp, which exhibits a red light in the direction contrary to that towards which the motor car is proceeding, is carried attached at the back of the motor car, the condition requiring the lamp attached in pursuance of section 2 of the act of 1896 to exhibit a red light shall not apply or have effect with regard to the motor car.

Provided also that the first paragraph of this condition shall not extend to any bicycle, tricycle, or other machine to which section 85 of the Local Government Act, 1888, applies.

(ii) Every lamp carried by the motor car when in use on a highway at any time during the period mentioned in this condition shall be so constructed, fitted, and attached as to prevent the movement or the use as a searchlight of the light exhibited by any such lamp.

ARTICLE III.—No person shall cause or permit a motor car to be used on any highway for the purpose of drawing any vehicle, or shall drive or have charge of a motor car when used for such purpose unless the conditions herein-after set forth are satisfied, namely,—

- (1) Conditions (2), (3), (5), and (6) of Article II. of this Order shall apply as if the vehicle drawn by the motor car was therein referred to instead of the motor car itself.

- (2) Every vehicle exceeding two hundredweight in weight unladen, drawn by a motor car, shall have a brake in good working order of such efficiency that its application to the vehicle shall cause two of the wheels of the vehicle on the same axle to be so held that the wheels shall be effectually prevented from revolving, or shall have the same effect in stopping the vehicle as if such wheels were so held.
- (3) The vehicle drawn by a motor car shall, when in pursuance of the condition lastly herein-before set forth a brake is required to be attached thereto, carry upon the vehicle a person competent to apply efficiently the brake: Provided that it shall not be necessary to comply with this condition if the brakes upon the motor car by which the vehicle is drawn are so constructed and arranged that neither of such brakes can be used without bringing into action simultaneously the brake attached to the vehicle drawn, or if the brake of the vehicle drawn can be applied from the motor car by a person upon the motor car independently of the brakes of the latter.

ARTICLE IV.—Every person driving or in charge of a motor car when used on any highway shall comply with the regulations herein-after set forth; namely,—

- (1) He shall not cause the motor car to travel backwards for a greater distance or time than may be requisite for the safety or convenience of the occupants of the motor car and of the passenger and other traffic on the highway.
- (2) He shall not when on the motor car, be in such a position that he cannot have control over the same, or that he cannot obtain a full view of the road and traffic ahead of the motor car, or quit the motor car without having taken due precautions against its being started in his absence, or allow the motor car or a vehicle drawn thereby to stand on such highway so as to cause any unnecessary obstruction thereof.
- (3) *He shall when meeting any carriage, horse, or cattle keep the motor car on the left or near side of the road, and when passing any carriage, horse, or cattle proceeding in the same direction keep the motor car on the right or off side of the same.*
- (4) *He shall not negligently or wilfully prevent, hinder, or interrupt the free passage of any person, carriage, horse, or*

It was held in *Burton v. Nicholson* * that a "tram-car" was a "carriage" within the order. But, after that decision, these two clauses were cancelled by

* [1909] 1 K. B. 397; 78 C. J. K. B. 295; 100 L. T. 344; 73 J. P. 107.

cattle on any highway, and shall keep the motor car and any vehicle drawn thereby on the left or near side of the road for the purpose of allowing such passage.

(5) He shall, whenever necessary, by sounding the bell or other instrument required by section 3 of the act of 1896, give audible and sufficient warning of the approach or position of the motor car.

(6) He shall on the request of any police constable in uniform, or of any person having charge of a horse, or if any such constable or person shall put up his hand as a signal for that purpose, cause the motor car to stop and to remain stationary so long as may be reasonably necessary.

ARTICLE V.—Every motor car shall be so constructed as to enable the driver, when the motor car is stationary otherwise than through an enforced stoppage owing to necessities of traffic, to stop the action of any machinery attached to, or forming part of the motor car so far as may be necessary for the prevention of noise. The driver shall on every such occasion make prompt and effective use of all such means as, in pursuance of this condition, are provided for the prevention of noise as above mentioned.

Provided that this regulation shall not apply so as to prevent the examination or working of the machinery attached to, or forming part of a motor car where any such operation is rendered necessary by any failure or derangement of the said machinery.

This Order may be cited as "The Motor Cars (Use and Construction) Order, 1904."

Given under the Seal of Office of the Local Government Board, this Ninth day of March, in the year One thousand nine hundred and four.

(L.S.)

WALTER H. LONG,
President.

S. B. PROVIS,
Secretary.

Order of
Local Govern-
ment Board,
dated
19 April,
1909.
As to the law
in districts to
which the
Town Police
Clauses Act
applies, see
(C), *ante*,
p. 422. As
to other
districts, *ante*,
pp. 420, 421.

THE HEAVY MOTOR CAR ORDER, 1904.

USE OF MOTOR CARS ON HIGHWAYS.

THE HEAVY MOTOR CAR ORDER, 1904, DATED DECEMBER 27, 1904, PRESCRIBING REGULATIONS AS TO WEIGHT, CONDITIONS OF USE, CONSTRUCTION, AND SPEED, OF HEAVY MOTOR CARS.

To the county councils of the several administrative counties in England and Wales ;—

To the mayor, aldermen, and commons of the city of London in common council assembled ;—

To the councils of the several county boroughs in England and Wales ;—

To the councils of the several metropolitan boroughs ;—

To the urban district councils of the several urban districts in England and Wales ;—

To the rural district councils acting as the highway authorities in rural districts in England and Wales ;—

And to all others whom it may concern.

Whereas by the Motor Car Acts, 1896 and 1903, provision was made with respect to the use of motor cars on highways, and in compliance with section 1 of the Locomotives on Highways Act, 1896, which in the Motor Car Act, 1903, and in this Order is referred to as “the principal act,” a motor car must be under three tons in weight unladen, and a motor car with a vehicle drawn by it must not exceed in weight unladen four tons ;

And whereas by section 12 of the Motor Car Act, 1903, it is enacted as follows ; that is to say,—

“12.—(1) The Local Government Board by regulations made under section 6 of the principal act may, as respects any class of vehicle mentioned in the regulations, increase the maximum weights of three tons and four tons mentioned in section 1 of that act, subject to any conditions as to the use and construction of the vehicle which may be made by the regulations.

“(2) The power of the Local Government Board to make regulations under section 6 of the Locomotives on Highways Act, 1896, shall, as respects motor cars exceeding two tons in weight unladen, include a power to make regulations as to speed.”

And whereas in pursuance of section 6 of the principal act, and of section 12 of the Motor Car Act, 1903, we, the Local

Government Board, are empowered to make regulations with respect to the use of motor cars on highways, and their construction, and the conditions under which they may be used ;

And whereas by section 7 of the principal act it is enacted that a breach of any regulation so made may, on summary conviction, be punished by a fine not exceeding ten pounds ;

And whereas by the Motor Cars (Use and Construction) Order, 1904, we made regulations with respect to the use of motor cars on highways, and their construction, and the conditions under which they may be used ;

And whereas by the Motor Car (Registration and Licensing) Order, 1903, we made regulations with respect to the registration of motor cars :

Now therefore, in pursuance of our powers in that behalf, we, the Local Government Board, do, by this our order, make the following regulations ; that is to say,—

ARTICLE I.—The regulations in this Order (herein-after referred to as “the regulations”) shall come into operation on the first day of March, one thousand nine hundred and five, and that date is herein-after referred to as the commencement of the regulations.	Commence- ment of regulations.
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ARTICLE II.—In the regulations—

The expression “heavy motor car” means a motor car exceeding two tons in weight unladen.	Definitions. Heavy Motor Car.
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The expression “trailer” means a vehicle drawn by a heavy motor car.	Trailer.
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The expression “registering authority” means, in relation to a heavy motor car, the council of a county, or the council of a county borough, by whom the heavy motor car has been, or can be, registered, in pursuance of the Motor Car Act, 1903, and of the Motor Car (Registration and Licensing) Order, 1903.	Registering Authority.
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The expression “axle-weight” means, in relation to an axle of a heavy motor car, or of a trailer, the aggregate weight transmitted to the surface of the road or other base whereon the heavy motor car or the trailer moves or rests, by the several wheels attached to that axle when the heavy motor car, or the trailer, is loaded.	Axle-weight.
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The expression “registered axle-weight” means, in relation to an axle of a heavy motor car, the axle-weight of that axle, as registered by the registering authority in pursuance of the regulations.	Registered Axle-weight.
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The expression “width,” in relation to the tire of a wheel, means the distance measured horizontally and in a straight line across the circumference of the wheel and between the	Width.
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two points in the outer surface of the tire which are farthest apart.

Diameter. The expression "diameter," in relation to a wheel, means the diameter measured between the two opposite points in the outer surface of the tire which are farthest apart.

Weight. The expression "weight," in relation to a heavy motor car or trailer when unladen, means the weight of a vehicle exclusive of the weight of any water, fuel, or accumulators used for the purpose of propulsion.

Increase of weights, unladen.

ARTICLE III.—Notwithstanding anything in the Motor Car Acts, 1896 and 1903, and except as is otherwise provided in the regulations, a heavy motor car may be used on a highway if the weight of the heavy motor car unladen does not exceed five tons, or if the weight of the heavy motor car unladen with the weight of an unladen vehicle drawn by it does not exceed six and a half tons.

Registration of weights.

ARTICLE IV.—(1) On every application to a registering authority for the registration of a heavy motor car, the owner shall declare—

- (a) The weight of the heavy motor car unladen ;
- (b) The axle-weight of each axle ; and
- (c) The diameter of each wheel.

(2)—(a) Before a heavy motor car is registered, the weight of the car unladen, and, if the registering authority so direct, the axle-weight of each axle of the car, shall be ascertained by or in the presence of an officer of the registering authority. That officer shall certify the weight or weights so ascertained, and shall make any necessary correction in the statement of weights declared by the owner.

(b) The officer of the registering authority shall also satisfy himself that the tires of the wheels of the car, if the tires are not pneumatic, or are not made of a soft or elastic material, are of the dimensions required by the regulations.

(c) The owner of a heavy motor car shall, for the purpose of this condition, cause the motor car to be driven or brought to any such place as the registering authority appoint.

(3) Upon the registration of a heavy motor car,—

- (a) the weight of the heavy motor car unladen, as certified as aforesaid,
- (b) the axle-weight of each axle,
- (c) the diameter of each wheel,
- (d) the width and material of the tire of each wheel, and
- (e) the highest rate of speed at which, in conformity with the regulations, the heavy motor car may be driven without a trailer,

shall be entered in the Register of Motor Cars.

(4) Upon receiving from the registering authority a copy of the entries made in the register relating to a heavy motor car, the owner of the heavy motor car shall cause—

- (i) the registered weight of the heavy motor car unladen,
- (ii) the registered axle-weight of each axle, and
- (iii) the highest rate of speed at which, in conformity with the regulations, the heavy motor car may be driven without a trailer,

to be painted, or otherwise plainly marked, in the first and second case, upon some conspicuous part of the right or off side of the heavy motor car, and, in the third case, upon some conspicuous part of the left or near side of the heavy motor car.

The owner of the heavy motor car shall cause the aforesaid particulars to be painted or marked in letters and figures not less than one inch in height, and of such shape and colour as to be clearly legible and clearly distinguishable from the colour of the ground whereon the letters and figures are painted or marked ; and he shall cause all the paint or marking to be from time to time repaired or renewed, as often as may be necessary to keep the said letters and figures clearly legible and clearly distinguishable.

(5) The owner of a heavy motor car which has been registered before, and which is in use at, the commencement of the regulations, shall, within six months thereafter, either cause the heavy motor car to be registered anew, or shall cause the heavy motor car to be brought before an officer of the registering authority with whom the heavy motor car has been already registered.

In either case the procedure prescribed by this article shall be followed with respect to the heavy motor car, as if it were a heavy motor car the owner whereof is for the first time an applicant for registration ; but in the latter case no registration fee shall be charged by the registering authority in respect of the heavy motor car, or in respect of the procedure prescribed by this article ; and in the case of a heavy motor car the weight of which, when unladen, exceeds five tons but does not exceed seven tons, and which has been registered before the first day of September, one thousand nine hundred and four, compliance with the procedure prescribed by this article shall, notwithstanding any other provision of the regulations, have effect as a sufficient authority for the use of the heavy motor car on a highway.

The registering authority shall furnish the owner of a heavy motor car with a certificate in an appropriate form, to the effect that the procedure prescribed by this article has been followed,

and that the heavy motor car may be used on a highway without further registration.

On the expiration of six months from the commencement of the regulations, a heavy motor car which has been registered before the commencement of the regulations, and in respect of which the procedure prescribed by this article has not been followed shall not, except for the purpose of being registered, be used on any highway until the heavy motor car has been registered anew; and all previous registration of the heavy motor car shall cease to have effect.

(6) Nothing in the regulations shall have effect so as to require the registering authority to register a heavy motor car which does not in all particulars satisfy each condition rendered applicable by the regulations to the heavy motor car or in respect of which there has been a failure to comply with the procedure prescribed by this article.

Axle-weights.

ARTICLE V.—(1) The axle-weight of an axle of a heavy motor car shall not exceed the registered axle-weight.

(2) The registered axle-weight of an axle of a heavy motor car shall not exceed eight tons, and the sum of the registered axle-weights of all the axles of a heavy motor car shall not exceed twelve tons.

Tires.

ARTICLE VI.—(1) The tire of each wheel of a heavy motor car shall be smooth, and shall, where the tire touches the surface of the road or other base whereon the heavy motor car moves or rests, be flat:

Provided that the edges of the tire may be bevelled or rounded to the extent in the case of each edge of not more than half an inch:

Provided also that, if the tire is constructed of separate plates, the plates may be separated by parallel spaces which shall be disposed throughout the outer surface of the tire so that nowhere shall the aggregate extent of the space or spaces in the course of a straight line drawn horizontally across the circumference of the wheel exceed one-eighth part of the width of the tire.

(2) The width of the tire of each wheel of a heavy motor car shall be determined by such of the following conditions as may apply to the circumstances of the case; that is to say,—

(a) The width shall in every case be not less than five inches.

(b) The width shall be not less than that number of half inches which is equal to the number of units of registered axle-weight of the axle to which the wheel is attached.

The unit of registered axle-weight shall vary according to the diameter of the wheel, and the rules set forth in the subjoined scale ; that is to say,—

- (i) If the wheel is three feet in diameter, the unit of registered axle-weight shall be seven and a half hundredweights ;
- (ii) If the wheel exceeds three feet in diameter, the unit of registered axle-weight shall be seven and a half hundredweights, with an addition of weight in the proportion of one hundredweight for every twelve inches by which the diameter is increased beyond three feet ; and in the same proportion for any increase which is greater or less than twelve inches ; and
- (iii) If the wheel is less than three feet in diameter, the unit of registered axle-weight shall be seven and a half hundredweights, with a deduction of weight in the proportion of one hundredweight for every six inches by which the diameter is reduced below three feet ; and in the same proportion for any reduction which is greater or less than six inches.

(3) This article shall not apply to any tire which is pneumatic or which is made of a soft or elastic material.

ARTICLE VII.—The speed at which a heavy motor car is driven on any highway shall not exceed eight miles an hour :
Provided that—

- (a) If the weight of the heavy motor car unladen exceeds three tons ; or
- (b) If the registered axle-weight of any axle exceeds six tons ; or
- (c) If the heavy motor car draws a trailer,

the speed shall not exceed five miles an hour.

Provided also that—

If the heavy motor car has all its wheels fitted with pneumatic tires or with tires made of a soft or elastic material, the speed at which the heavy motor car may be driven on any highway shall not exceed—

- (a) Twelve miles an hour—

Where the registered axle-weight of any axle does not exceed six tons ; and

- (b) Eight miles an hour—

Where the registered axle-weight of any axle exceeds six tons.

ARTICLE VIII.—The diameter of a wheel of a heavy motor car, if the wheel is fitted with a tire which is not pneumatic or is not made of a soft or elastic material, shall be not less than two feet.

Speed.

Size of wheels.

Width.

ARTICLE IX.—Notwithstanding anything in the Motor Car (Use and Construction) Order, 1904, a heavy motor car, if its weight unladen is three tons or exceeds three tons, and any trailer drawn by any such heavy motor car may, when measured between its extreme projecting points, be of a width not exceeding seven feet six inches.

Springs.

ARTICLE X.—Every heavy motor car shall be constructed with suitable and sufficient springs between each axle and the frame of the heavy motor car.

Trailers.

ARTICLE XI.—(1) The owner of a trailer shall cause to be painted, or otherwise plainly marked, upon some conspicuous part of the right or off side of the trailer, in letters and figures not less than one inch in height, and of such shape and colour as to be clearly legible and clearly distinguishable from the colour of the ground whereon the letters and figures are painted or marked,—

(a) The weight of the trailer unladen ; and

(b) The axle-weight of each axle of the trailer, if the weight of the trailer unladen exceeds one ton.

He shall cause the paint or marking to be from time to time repaired or renewed, as often as may be necessary to keep the said letters and figures clearly legible and clearly distinguishable.

(2) The regulations so far as they relate to the width of the tires and the size of the wheels of a heavy motor car, the wheels whereof are fitted with tires which are not pneumatic or are not made of a soft or elastic material, shall, with the necessary modifications apply and have effect with respect to a trailer exceeding one ton in weight unladen, with the substitution in the regulations of three inches for five inches as the minimum width of the tires, and of references to the axle-weights painted or marked upon the trailer in pursuance of this article for references to registered axle-weights.

(3) The axle-weight of an axle of a trailer shall not exceed four tons.

(4) Every trailer shall be constructed with suitable and sufficient springs between each axle and the frame of the trailer.

(5) A heavy motor car which is used either as a stage carriage or otherwise for the conveyance of passengers for gain or hire, shall not draw a trailer.

Ascertainment of weights by officers of councils.

ARTICLE XII.—If a heavy motor car is upon a highway within a distance not exceeding half a mile by road from a public weighing machine, or other weighing machine which is conveniently accessible, and which belongs to or is subject to the control, or may be used for any purposes of a registering

authority or of any other council having control of the highway, and a duly authorised officer of the registering authority or other council has reasonable ground for ascertaining whether the axle-weight for the time being of any axle of the heavy motor car, or of the trailer drawn by the heavy motor car exceeds the registered or marked axle-weight of that axle, the officer may require the person driving or in charge of the heavy motor car to drive the heavy motor car with or without the trailer, or to cause the heavy motor car to be driven with or without the trailer to the weighing machine, and the said officer may then cause the axle-weight for the time being of any axle to be ascertained; and the person driving or in charge of the heavy motor car shall comply with any such requirement, and shall, to the best of his ability, afford all such facilities as may be reasonably necessary for the purpose of ascertaining the axle-weight as aforesaid.

ARTICLE XIII.—No person shall cause or permit to be used on any highway, or shall on any highway drive or have charge of, a heavy motor car or a trailer which is not in all respects in accordance with the regulations so far as they relate to the use and construction of heavy motor cars or trailers, as the case may be, or which is so used or driven as to contravene the regulations :

Breach of regulations.
Saving for existing heavy motor cars.

Provided that during a period of six months after the commencement of the regulations any failure to comply with the regulations so far as they relate to the use or construction of heavy motor cars or trailers shall not be deemed to be a breach or contravention of the regulations, if the failure occurs solely in relation to a heavy motor car registered before, or to a trailer which is in use at, the commencement of the regulations.

*ARTICLE XIV.—(1) With respect to the use of a heavy motor car on a bridge forming part of a highway the following regulations, subject to the conditions set forth in subdivision (2) of this Article, shall apply and have effect; that is to say,—

Use of heavy motor cars on bridges.

Where the person who is liable to the repair of the bridge states in a prescribed notice—

(a) that the bridge is insufficient to carry a heavy motor car the registered axle-weight of any axle of which exceeds three tons, or the registered axle-weights of the several axles of which exceed in the aggregate five tons, or any greater weight specified in the prescribed notice, or

(b) that the bridge is insufficient to carry a heavy

* As substituted by Heavy Motor Car (Amendment) Order, 1907.

motor car drawing a trailer if the registered axle-weights of the several axles of the heavy motor car and the axle-weights of the several axles of the trailer exceed in the aggregate five tons, or any greater weight which is specified in the prescribed notice, the owner of any such heavy motor car shall not cause or suffer the heavy motor car to be driven, and the person driving or in charge of the heavy motor car shall not drive the heavy motor car, upon the bridge except with the consent of the person liable to the repair of the bridge :

(2) The conditions, subject to which the regulations in subdivision 1 of this article apply and have effect, are the following ; that is to say,—

- (i) Where a dispute or difference arises in relation to the insufficiency of the bridge to carry a heavy motor car, and, on a reference by the person liable to the repair of the bridge and the owner of the heavy motor car, the award or determination of an arbitrator or arbitrators or umpire adjudges the bridge to be sufficient to carry the heavy motor car this article shall cease to apply or have effect as regards any such heavy motor car, and the use of the bridge by that heavy motor car, and the person liable to the repair of the bridge shall forthwith remove every prescribed notice affecting the heavy motor car and the bridge.
- (ii) If, within a period of one month, after a request in writing by the owner of a heavy motor car, the person liable to the repair of the bridge neglects or refuses to become a party to the submission to arbitration of any such dispute or difference as aforesaid, or, having become a party to the submission, neglects or refuses to concur in the appointment of an arbitrator, or to appoint an arbitrator or an umpire or third arbitrator according as the submission or any agreement between the parties may require, this article shall cease to apply or have effect as regards any such heavy motor car and the use of the bridge by that heavy motor car ; and the person liable to the repair of the bridge shall forthwith remove every prescribed notice affecting the heavy motor car and the bridge.
- (iii) The person liable to the repair of the bridge may at any time by a prescribed notice specify with respect to a heavy motor car, with or without a trailer, a greater weight than that specified in a prescribed notice which in pursuance of this article has been removed : and there-

upon this article shall apply and have effect with respect to the prescribed notice so substituted, and with respect to any other matter or thing to which this article refers as it has applied and had effect with respect to a prescribed notice of earlier date, and with respect to any such other matter or thing, prior to the date of the prescribed notice substituted as aforesaid.

(3) For the purposes of this article the expression "prescribed notice" means a statement which contains all such particulars as are required to be shown for the purposes of the regulations and conditions in this article, and also the name and address of the person liable to the repair of the bridge, which is printed or painted in legible letters or figures of such a colour as to be clearly distinguishable from the colour of the ground whereon the letters and figures are printed or painted, which is attached to or forms part of a suitable board, plate or tablet of wood, iron, or other durable material, and which is affixed or set up in a suitable and conspicuous position at each end of a bridge.

(4) The owner of a heavy motor car the registered axle-weights of the several axles of which, with the axle-weights of the several axles of any trailer drawn by the heavy motor car, exceed in the aggregate six tons shall not cause or suffer the heavy motor car to be driven, and the person driving or in charge of the heavy motor car shall not drive the heavy motor car upon a bridge forming part of a highway at any time when another heavy motor car, or a locomotive to which the Locomotives Act, 1898, applies, is on the bridge.

(5) Nothing in this article shall apply to

Menai Bridge,

any bridge which crosses the river Thames and any part of which is in the City of London or County of London, and any bridge

(a) whereof the use is subject, for the time being, to any such condition, restriction, or prohibition, imposed by or by virtue of a Local and Personal Act, or by or by virtue of an Act confirming a Provisional Order, or by or by virtue of any bye-law, regulation, rule, order, notice, or other means authorized by the said Act, as is inconsistent with the use on the bridge of any such heavy motor car as is described in this article; and

(b) whereon, for the time being, the effect of the condition, restriction, or prohibition is stated in a prescribed notice.

ARTICLE XV.—(1) The Motor Car (Registration and Licensing) Order, 1903, shall, with the necessary modifications, apply and have effect so as to provide that for the

Register of
Motor Cars.

purpose of the registration of heavy motor cars there shall be a separate part in the Register of Motor Cars, and that the separate part shall be in Form A. set out in the schedule to this Order or in a form to the like effect; and that to the form of particulars to be furnished by an applicant for registration of a heavy motor car, there shall, for the purpose of enabling the applicant to declare—

(a) the weight of the heavy motor car unladen;

(b) the axle-weight of each axle; and

(c) the diameter of each wheel;

be added the particulars shown in the Form B. set out in the said schedule.

Application
of earlier
orders as to
motor cars.

(2) In every case in which, after prior registration, the procedure prescribed by Article IV. in relation to such a case has been followed, the registering authority shall cause the entry of prior registration to be erased, and such entries as are required in compliance with the procedure prescribed by Article IV. to be made in the appropriate columns of the separate part in the Register of Motor Cars.

ARTICLE XVI.—As regards matters which are not hereinbefore expressly mentioned in relation to heavy motor cars, the Motor Car (Registration and Licensing) Order, 1903, and the Motor Cars (Use and Construction) Order, 1904, shall apply and have effect subject to the regulations; and any provisions of either order which are inconsistent with the regulations shall cease to apply and have effect in relation to a heavy motor car.

Military
motor cars.

ARTICLE XVII.—The regulations, in relation to any heavy motor car which belongs to His Majesty the King, and is used for the time being, under the care, superintendence, or control of a Secretary of State, for military purposes, shall apply and have effect—

(a) As if, in Article III. of this Order, “six tons” were substituted for “five tons,” and “eight tons” were substituted for “six and a half tons”; and

(b) As if, to subdivision (1) of Article VI. of this Order, there were added the following words; that is to say,—

“Provided further that if the tire is constructed, shod or fitted with diagonal crossbars, the conditions of this article shall for the purpose of determining the width of the tire, apply subject to the substitution throughout those conditions of five hundredweights for seven and a half hundredweights as the unit of registered axle-weight.”

Short title.

ARTICLE XVIII.—This Order may be cited as the Heavy Motor Car Order, 1904.

SCHEDULE.

ADDITIONS to FORMS prescribed by THE MOTOR CAR Registration and Licensing) ORDER, 1903.

FORM A.

Register of Heavy Motor Cars.

COUNTY [or COUNTY BOROUGH] of

Index Mark and Number on Identifi- cation Plates.	Full Name of Owner and Postal Address of his usual Residence.	Description or Type of Car.	Type and Colour of Body of Car.	Weight un- laden.	Axle- weight of each Axle.	Diameter of Wheels.	Width and Material of Tires.	Maximum Speed per- missible.	Whether intended for—			Date of Regis- tration.	If Can- celled, Date of Cancel- lation.
									(a) Private use.	(b) Use for Trade Purposes.	(c) Use as a Public Con- veyance.		
1.	2.	3.	4.	5.	6.	7.	8.	9.				11.	12.

THE HEAVY MOTOR CAR ORDER, 1904.

FORM B.

Declaration to be added before the words "*Signature of owner or person applying on his behalf*" at the foot of the form in the Third Schedule to the Motor Car (Registration and Licensing) Order, 1903.

I hereby declare that the following particulars in relation to the heavy motor car to which my application relates are true to the best of my knowledge and belief:

Weight of heavy motor car unladen	
Axle-weight of each axle .	
Diameter of each wheel . .	

Given under the Seal of the Local Government Board,
this Twenty-seventh day of December, in the year One
thousand nine hundred and four.

(L.S.)

WALTER H. LONG,
President.

S. B. PROVIS,
Secretary.

LOCOMOTIVE (PETROLEUM).

REGULATIONS DATED JULY 31, 1907, MADE BY THE SECRETARY OF STATE UNDER SECTION 5 OF THE LOCOMOTIVES ON HIGHWAYS ACT, 1896, AS TO THE KEEPING AND USE OF PETROLEUM FOR THE PURPOSES OF LIGHT LOCOMOTIVES.

Locomotives on Highways Act, 1896 (59 & 60 Vict. c. 36, s. 5).

In promulgating the following regulations relating to the keeping, conveyance and use of petroleum in connection with light locomotives, the Secretary of State for the Home Department desires to direct public attention to the dangers that may arise from the careless use of the more volatile descriptions of petroleum, commonly known as petroleum spirit. Not only is the vapour therefrom, which is given off at ordinary temperatures, capable of being easily ignited, but it is also capable, when mixed with air, of forming an explosive atmosphere. It is, therefore, necessary, in dealing with and handling the spirit, to take strict precautions by the employment of thoroughly sound and properly closed vessels to prevent leakage of the spirit, and by avoiding the use of naked lights in dangerous proximity to prevent the contact of any form of artificial light with the highly inflammable vapour which it is always evolving.

REGULATIONS.

By virtue of the powers conferred on me by the fifth section of the Locomotives on Highways Act, 1896, I hereby make the following regulations for the keeping and use of petroleum for the purposes of light locomotives.*

In these regulations the expression "petroleum spirit" shall mean the petroleum to which the Petroleum Acts, 1871 and 1879, apply, provided that when any petroleum other than that to which the said Petroleum Acts apply, is on or in any light locomotive, or is being conveyed or kept in any place on or in which there is also present any petroleum spirit as above defined, the whole of such petroleum shall be deemed to be petroleum spirit.

In these regulations the expression "storehouse" shall mean any room, building, coachhouse, lean-to, or other place in which petroleum spirit for the purposes of light locomotives is

* Under the seventh section of the act, a breach of these regulations may, on summary conviction, be punished by a fine not exceeding ten pounds.

kept in pursuance of these regulations and shall include an open-air place of storage, when and so long as due precautions for the prevention of unauthorised persons having access to the petroleum spirit are taken in pursuance of No. 13 of these regulations.

1. The following shall be exempt from licence under the Petroleum Act, 1871, namely :—

(a) Petroleum spirit which is kept for the purpose of, or is being used on, light locomotives when kept or used in conformity with these regulations.

(b) Petroleum spirit which is kept for the purpose of, or is being used on, light locomotives by, or by authority of, one of His Majesty's Principal Secretaries of State, the Admiralty, or other department of the Government.

2. These regulations shall apply to petroleum spirit which is kept for the purpose of, or is being used on, light locomotives, and for which (save as hereinafter provided) no licence has been granted by the local authority under the Petroleum Act, 1871, and shall not apply to petroleum spirit which is kept for sale, or partly for sale and partly for use on light locomotives, and which must be kept in accordance with the provisions of the Petroleum Acts as heretofore, except that Regulations 13 and 14 shall apply to petroleum spirit which is kept partly for sale and partly for use on light locomotives.

These regulations shall not apply to the keeping or use of petroleum spirit by or under the control of any Government department. Such keeping or use may be the subject of regulations to be made by the department concerned.

3. Where for any special reason a person keeping petroleum spirit for the purpose of light locomotives applies for a licence under the Petroleum Act, 1871, and the local authority see fit to grant such licence, such petroleum spirit shall be subject only to Regulations 8 to 15 and the conditions of such licence, in so far as the said conditions are not contrary to the said Regulations 8 to 15.

4. Where a storehouse forms part of, or is attached to, another building, and where the intervening floor or partition is of an unsubstantial or highly inflammable character, or has an opening therein, the whole of such building shall be deemed to be the storehouse, and no portion of such storehouse shall be used as a dwelling or as a place where persons assemble. A storehouse shall have a separate entrance from the open air distinct from that of any dwelling or building in which persons assemble.

5. The amount of petroleum spirit to be kept in any one storehouse, whether or not upon light locomotives, shall not exceed 50 gallons at any one time.

6. Where two or more storehouses are in the same occupation and are situated within 20 feet of one another, they shall for the purposes of these regulations be deemed to be one and the same storehouse, and the maximum amount of petroleum spirit prescribed in the foregoing regulation shall be the maximum to be kept in all such storehouses taken together. Where two or more storehouses in the same occupation are distant more than 20 feet from one another, the maximum amount shall apply to each storehouse.

7. Any person who keeps petroleum spirit in a storehouse which is situated within 20 feet of any other building whether or not in his occupation, or of any timber stack or other inflammable goods not owned by him, shall give notice to the local authority under the Petroleum Acts for the district in which he is keeping such petroleum spirit, that he is so keeping petroleum spirit, and shall renew such notice in the month of January in each year during the continuance of such keeping, and shall permit any duly authorised officer of the local authority to inspect such petroleum spirit at any reasonable time. This regulation shall not apply to petroleum spirit kept in a tank forming part of a light locomotive.

8. Every storehouse shall be thoroughly ventilated.

9. Petroleum spirit shall not be kept, used, or conveyed except in metal vessels so substantially constructed as not to be liable, except under circumstances of gross negligence or extraordinary accident, to be broken or become defective or insecure. Every such vessel shall be so constructed and maintained that no leakage, whether of liquid or vapour, can take place therefrom.

10. Every such vessel, not forming part of a light locomotive, when used for conveying or keeping petroleum spirit shall bear the words "petroleum spirit highly inflammable" conspicuously and indelibly stamped or marked thereon, or on a metallic or enamelled label attached thereto, and shall be of a capacity not exceeding two gallons.

Provided that this limitation of capacity shall not apply in any place of storage which is licensed under the Petroleum Act, 1871, unless such limitation is required by the conditions of the licence.

11. Before repairs are done to any such vessel, that vessel shall, as far as practicable, be cleaned by the removal of all petroleum spirit and of all dangerous vapours derived from the same.

12. The filling or replenishing of a vessel with petroleum spirit shall not be carried on, nor shall the contents of any such vessel be exposed in the presence of fire or artificial light, except

a light of such construction, position or character, as not to be liable to ignite any inflammable vapour arising from such spirit, and no fire or artificial light capable of igniting inflammable vapour shall be brought within dangerous proximity of the place where any vessel containing petroleum spirit is being kept.

13. In the case of all petroleum spirit kept or conveyed for the purpose of, or in connection with, any light locomotive, (a) all due precautions shall be taken for the prevention of accidents by fire or explosion, and for the prevention of unauthorised persons having access to any petroleum spirit kept or conveyed, and to the vessels containing or intended to contain, or having actually contained, the same; and (b) every person managing, or employed on, or in connection with, any light locomotive shall abstain from every act whatever which tends to cause fire or explosion, and which is not reasonably necessary, and shall prevent any other person from committing such act.

14. In the storehouse or in any place where a light locomotive is kept or is present, petroleum spirit shall not be used for the purpose of cleaning or lighting, or as a solvent or for any purpose other than as fuel for the engine of a light locomotive.

Provided that where due precaution is taken to prevent petroleum spirit from escaping into a sewer or drain and provision made for disposing safely of any surplus petroleum spirit and where no fire or naked light is present, quantities not exceeding one gill may be used for the cleaning of a light locomotive at a safe distance from any building, place of storage of inflammable goods, or much-frequented highway, or for the repair of tires, under suitable precautions.

This regulation shall apply to premises on which petroleum spirit is kept for the purpose of, or is being used on, light locomotives, whether such premises are licensed or not, unless the local authority see fit, in the case of licensed premises to grant an exemption by a special term of the licence.

15. Petroleum shall not be allowed to escape into any inlet or drain communicating with a sewer.

16. These regulations shall come into operation on the 15th August, 1907, from which date all previous regulations made under the fifth section of the said Act are hereby repealed.

H. J. GLADSTONE,
One of His Majesty's Principal
Secretaries of State.

Whitehall,
31st July, 1907.

NOTE.—From the above regulations it will be seen that there are two methods in which petroleum spirit required for use in motor cars may be kept. The first of these will be the usual method, namely, to keep in accordance with these regulations ; but where a person finds that for some special reason he cannot observe one of the Regulations 4, 5, or 6, he may resort to the second method, namely, to apply to the local authority for a licence. In such cases the place will be examined by the local authority officer, who will advise the local authority as to its suitability for licence. Where a licence has been granted Regulations 4 to 7 no longer apply.

In no case is petroleum spirit kept wholly or partly for sale exempt from the necessity of a licence.

CRIMINAL APPEAL RULES, 1908.

Procedure on Applications for Bail: Rights of Sureties: Estreat of Recognizances.

Bail.

Court of
Appeal to
specify
amount and
before whom
recognizances
to be taken.

Appellant's
recognizances
to be taken
before a
Visiting
Justice.

Surety's
recognizances
before Petty
Sessional
Court.

Appellant
and Prison
Governor to
receive notice
of terms of
bail.

Police of
district to
assist Petty
Sessional
Court in
inquiring as
to surety's
sufficiency.

Appellant's
and surety's
recogni-
zances to be
forwarded to
Registrar.

Clerk to give
surety certi-
ficate of
recogni-
zances.

Registrar on

29. (a) When the Court of Appeal under the act admits an appellant to bail pending the determination of his appeal on an application by him duly made in compliance with these rules, the court shall specify the amounts in which the appellant and his surety or sureties (if any be required) shall be bound by recognizance, and shall direct, if they think right so to do, before whom the recognizances of the appellant and his surety or sureties (if any) may be taken.

(b) In the event of the Court of Appeal not making any special order or giving special directions under this rule, the recognizances of the appellant may be taken before a justice of the peace being a member of the visiting committee of and at the prison in which he shall then be confined or the governor thereof, and the recognizances of his surety or sureties (if any) may be taken before any petty sessional court.

(c) The registrar shall notify the appellant and the governor of the prison within which he is confined, the terms and conditions on which the court shall admit the appellant to bail under the act.

(d) The said petty sessional court shall be entitled to require the assistance of the police acting within such petty sessional division for the purpose of making inquiry as to the sufficiency or otherwise, of any person offering himself as a surety on behalf of any appellant who has, under the act, been granted bail, and it shall be the duty of such police to give such assistance to and as and when required by a petty sessional court under this rule.

(e) After the recognizance of a surety has been duly taken under these rules by such petty sessional court, the clerk thereof shall forward such recognizance to the registrar, and the governor of the prison in which the appellant is then confined shall, after the appellant's recognizance has been duly taken in pursuance of this rule, forward the same to the registrar. The clerk shall after the recognizances of a surety are taken give to him a certificate in the form (XV.) in the schedule hereto, which such surety shall sign, and retain.

(f) The registrar on being satisfied that the recognizances of the appellant and his surety or sureties (if any) are in due form and in compliance with the order of the court admitting

the appellant to bail, shall send in the form (XII.) in the schedule to these rules a notice to the governor of the prison in which the appellant shall then be confined. This notice, when received by the said governor, shall be a sufficient authority to him to release the appellant from custody.

(j) Where the surety or sureties, for an appellant under the act, upon whose recognizances such appellant has been released on bail by the Court of Criminal Appeal, suspects that the said appellant is about to depart out of England or Wales, or in any manner to fail to observe the conditions of his recognizances on which he was so released, such surety or sureties may lay an information before one of His Majesty's justices of the peace acting in and for the petty sessional division in which the said appellant is, or is by such surety or sureties believed to be, or in which such surety or sureties may then be, in the form (XVI.) in the schedule hereto, and such justice shall thereupon issue a warrant in the form (XVII.) in the schedule hereto, for the apprehension of the said appellant.

(k) The said appellant shall, on being apprehended under the said warrant, be brought before the petty sessional court in and for which the said justice acts before whom the said information was laid, or some other petty sessional court specified in the said warrant. The said petty sessional court shall on verification of the said information by oath of the informant, by warrant of commitment in the form (XVIII.) in the schedule hereto, commit him to the prison to which persons charged with indictable offences before such petty sessional court are ordinarily committed. The governor of such prison shall, unless such prison was the prison from which the appellant was released on bail under these rules, notify the Prison Commissioners of such commitment, as in this rule mentioned.

Where the appellant is by such petty sessional court committed to a prison which was not the prison from which he was released on bail after his conviction, the Prison Commissioners subject to any order of the court of appeal may transfer him to the prison from which he was so released.

(l) The clerk of the said petty sessional court, on the commitment of any such appellant, shall forthwith notify the registrar to that effect, and forward to him the said information and the deposition in verification thereof taken before such petty sessional court together with a copy of the said warrant of commitment.

(m) At any time after an appellant has been released on bail under the act, the Court of Appeal may, if satisfied that it is in the interest of justice so to do, revoke the order admitting

receiving re-
cognizances
in due form
to notify
Governor of
Prison
to release
Appellant.
Provisions
for sureties
discharging
their
obligations.

How
Appellant
on bail to be
dealt with on
arrest at
instance of
sureties.

Arrest and
commitment
of Appellant
to be notified
to Registrar
by Clerk to
Petty
Sessional
Court.
Power of
Court of

Appeal to
revoke order
for bail.

Enforcing
duties under
Rules.

Warrants for
arrest of
Appellants to
be deemed to
be Warrants
issued under
Indictable
Offences Act,
1848.

him to bail, and issue a warrant in the form (XIX.) in the schedule hereto for his apprehension, and order him to be committed to prison.

46. The performance of any duty imposed upon any person under the act or these rules may be enforced by order of the Court of Appeal.

47. Any warrant for the apprehension of an appellant issued by the Court of Appeal shall be deemed to be, for all purposes, a warrant issued by a justice of the peace for the apprehension of a person charged with any indictable offence under the provisions of the Indictable Offences Act, 1848 (11 & 12 Vict. c. 42) or any act amending the same.

FORM X.

CRIMINAL APPEAL ACT, 1907.

Recognizance of Bail of Appellant.

Be it remembered that whereas was convicted of on the day of , 190 (and was thereupon sentenced to), and now is in lawful custody in His Majesty's prison at and has duly appealed against his conviction (and sentence) to the Court of Criminal Appeal, and has applied to the said court for bail pending the determination of his appeal, and the said court has granted him bail on entering into his own recognizances in the sum of £ (and with sureties each in the sum of £), the said personally cometh before me the undersigned being one of His Majesty's justices of the peace acting in and for the of and a member of the visiting committee of the said prison [or governor of the said prison], and acknowledges himself to owe to our said Lord the King the said sum of £ , of good and lawful money of Great Britain, to be made and levied of his goods and chattels, lands and tenements to the use of our said Lord the King, his heirs and successors, if he the said fail in the condition endorsed.

Taken and acknowledged this day of , 190 , at the prison at , before me,

Justice of the Peace.

Condition.

The condition of the within-written recognizance is such that if he the said shall personally appear and surrender himself at and before the Court of Criminal Appeal at each and every hearing of his appeal to such court and at the final determination thereof and to then and there abide by the judgment of the said court and not to depart or be absent from such court at any such hearing without the leave of the said court, and in the meantime not to depart out of England or Wales, then this recognizance to be void or else to stand in full force and effect.

The following to be filled up by the appellant and signed by him :—

“When released on bail my residence, to which any notices, &c., are to be addressed, will be as follows :—

(Signed)

Appellant.”

FORM XI.

CRIMINAL APPEAL ACT, 1907.

Recognizance of Appellant's Sureties.

Be it remembered that on this day of , 190 , of (*occupation*), and , of (*occupation*), personally came before us the undersigned being (two) of His Majesty's justices of the peace sitting at a petty sessional court at in the of , and severally acknowledged themselves to owe to our Lord the King the several sums following, that is to say, the said the sum of £ , and the said the sum of £ , of good and lawful money of Great Britain, to be made and levied of their goods and chattels, lands and tenements, respectively, to the use of our said Lord the King, his heirs and successors, if , now in lawful custody in His Majesty's prison at , fail in the condition hereon endorsed.

Taken and acknowledged before (us) the undersigned, the day and year first above mentioned.

Justices of the Peace.

Condition.

The condition of the within-written recognizance is such that whereas the said having been convicted of , and now in such lawful custody as before mentioned (under a sentence of for such offence), has duly appealed to the Court of Criminal Appeal against his said conviction (and sentence), and having applied to the said court for bail, pending the determination of his said appeal, has been granted bail on his entering into recognizance in the sum of £ , with sureties each in the sum of £ , if the said shall personally appear and surrender himself at and before the said court at each and every hearing of his said appeal to such court and at the final determination thereof, and to there and then abide by the judgment of the said court and not depart or be absent from the said court at any such hearing without the leave of the court, and in the meantime not to depart out of England and Wales, then this recognizance to be void or else to stand in full force and effect.

FORM XV.

CRIMINAL APPEAL ACT, 1907.

CERTIFICATE TO SURETY.

R. v.

THIS IS TO CERTIFY that you , of , whose signature is below, have been accepted by the petty sessional court acting in

Here fill in
Surety's
name and
address.

and for the petty sessional division of _____, on this _____ day of _____, A.D. 190____, as surety for the above-named _____ in the sum of £ _____, for the due appearance of the said _____ before the Court of Criminal Appeal at each and every hearing of his appeal and at the final determination thereof, and that the said _____ shall then and there abide by the judgment of the said court and not depart or be absent from such court at any such hearing without the leave of the said court, and in the meantime not to depart out of England or Wales. And that your said recognizance will be duly forwarded by me to the Registrar of the Court of Criminal Appeal.

(Signed)

Clerk of the said Court.

I acknowledge that the above certificate is correct.

(Signed)

Surety.

FORM XVI.

CRIMINAL APPEAL ACT, 1907.

Information of Surety for Arrest of Appellant.

R. v.

(Appellant).

(_____)
to Wit,

† Here state
Appellant's
name and
address if
known.

* Here fill in
the name,
address and
description
of Surety.

The information of* _____, of _____, laid before me the undersigned one of His Majesty's justices of the peace acting in and for the petty sessional division of _____, upon an application for a warrant for the apprehension of† _____, and the deposition of the said _____ in support thereof on the _____ day of _____.

The said* _____ saith as follows:—

I,* _____, do say that the above-named† _____ having been granted bail by the Court of Criminal Appeal, himself in the sum of £ _____, and with _____ surety in the sum of £ _____, was released on such bail on condition that he should personally appear and be present at and before the Court of Criminal Appeal at each and every hearing of his appeal and at the final determination thereof and to then and there abide by the judgment of the said court and not to depart or be absent from such court on any such hearing without the leave of the said court and in the meantime not to depart out of England or Wales.

And that I became surety for the performance of the said conditions by the said _____ in the sum of £ _____, a certificate whereof signed by the clerk of the petty sessional division of _____ and by me is now shown to me marked (a).

And that I suspect that the said _____ is about to depart out of England or Wales (or state in what manner the appellant is believed to be about to fail in the observance of his recognizances), and I therefore desire to surrender the said _____ into custody and thereby

discharge myself from my said recognizances. I verily believe that the said is now in the petty sessional division of ,

(Signed)

Surety.

Laid before me the day and year first above written.

(Signed)

()

Justice of the Peace.

FORM XVII.

Warrant on Information of Surety.

To the Constables of the Metropolitan Police Force (or as the case may be).

()
to Wit.

WHEREAS information hath been duly laid before me the undersigned by , of , for that* having been released on bail by the Court of Criminal Appeal on recognizances conditioned to appear and to be present at and before the Court of Criminal Appeal at each and every hearing of his appeal and at the final determination thereof and to then and there abide by the judgment of the said court and not to depart or be absent from such court on any such hearing without the leave of the said court and in the meantime not to depart out of England or Wales. And that the said† doth suspect that the said is about to depart out of England or Wales (*or as the case may be*). And that the said is believed to be within the petty sessional division of .

*Here fill in the Appellant's name.

†Here fill in Surety's name.

These are therefore to authorise you the said constables forthwith to apprehend the said and to bring him before the petty sessional court of to the intent that he may be committed to His Majesty's prison at and there to be detained according to law.

Given under my hand and seal this day of , A.D. 190 .

(Signed)

()

Justice of the Peace.

Acting in and for the petty sessional division of , in the of .

FORM XVIII.

Commitment of Appellant on Surety's Information.

To the Constables of the Metropolitan Police Force (or as the case may be) and to the Governor of His Majesty's Prison at ()
to Wit.

WHEREAS on the day of information was laid before one of His Majesty's justices of the peace acting in and for the county of upon an application for a warrant for the apprehension of for that he being a prisoner released on bail by the Court of Criminal Appeal was believed and suspected of being about to fail to observe the conditions of his recognizance by the

said his surety. And that the said was then desirous of surrendering the said
[*Appellant.] AND WHEREAS the said* being now before the petty sessional court of and surrendered by the said in discharge of his recognizances You are therefore hereby commanded forthwith to deliver him the said to the governor of His Majesty's prison at together with this warrant of commitment and you the said governor are required to receive the said into your custody in the said prison and there safely to keep him according to law.
Given under our hands and seal this day of , A.D. 190 .

(Signed)
()
*Justices of the Peace for
the said Petty
Sessional Division.*

FORM XXXIII.
CRIMINAL APPEAL ACT, 1907.

R. v.

LIST OF EXHIBITS.

Number or other identifying mark on Exhibit.	Short description of Exhibit.	Produced by Prosecution or Defence.	Directions of the Judge of the Court of Trial, with name and address of person retaining Exhibit.

(Signed) Coroner.
Clerk to Committing Justice.
Officer of Court of Trial.

CINEMATOGRAPH REGULATIONS.

20TH DECEMBER, 1909 (No. 1465).

In pursuance of the power vested in me by the Cinematograph Act, 1909 (9 Edw. 7, c. 30), I hereby make the following regulations :—

1. No building shall be used for cinematograph or other similar exhibitions to which the Act applies, unless it be provided with an adequate number of clearly indicated exits placed in such positions and so maintained as to afford safe and speedy egress for the audience.

The seating in the building in which the exhibition is given shall be so arranged as not to interfere with free access to the exits ; and the gangways, staircases, and passages leading to the exits shall be kept clear of obstructions, whether permanent or temporary, during the presence of the public.

2. *Enclosures.*

(a.) The cinematograph apparatus shall be placed in an enclosure of sufficient dimensions to allow the operator to work freely : and, except in the case of a moveable building or structure, the enclosure shall be of a permanent nature. Such enclosure shall be placed outside the building or auditorium and shall be substantially constructed of fire-resisting material or lined internally with the same, and so ventilated as, in case of fire, to prevent the escape of smoke into the auditorium.

(b.) The entrance to the enclosure shall be fitted with a self-closing smoke-proof door of fire-resisting material suitably placed and opening outwards.

(c.) A suitable barrier shall be placed round the enclosure, or other effectual means taken, to prevent the audience coming into contact therewith.

(d.) Openings not larger than is necessary for effective projection, and not exceeding two for each lantern, shall be permitted in the front face of the enclosure. Each opening shall be fitted with a screen of fire-resisting material, which on being released from either inside or outside the enclosure shall close automatically with a smoke-proof joint.

(e.) The necessary pipes and cables shall enter through efficiently bushed openings.

3. Every licence granted under the Act shall contain specific conditions for the carrying out of regulations 1 and 2 in the building for which the licence is granted.

Provided that, where the licensing authority is of opinion that it is impracticable, or, in the circumstances, unnecessary to safety, that the enclosure should be of a permanent nature or should be erected outside the building or auditorium, the licence may by express words dispense with these requirements. In any such case the enclosure shall be effectually ventilated direct to the outside air ; and the floor, if of wood, shall be completely covered with fire-resisting material.

Subject to the provisions of No. 14 of these regulations, every licence granted under the Act shall contain a clause providing for its lapse, or, alternatively, for its revocation by the licensing authority, if any alteration is made in the building or the enclosure without the sanction of the said authority.

4. The lantern shall be placed on firm supports of fire-resisting construction. The lantern shall be provided with a metal shutter which can be readily inserted between the source of light and the film gate.

The film gate shall be of massive construction and provided with ample heat radiating surface, and the passage for the film shall be sufficiently narrow to prevent flame travelling upwards or downwards from the light opening.

5. Where electric light is reasonably available for use in the building, no other illuminant shall be used for the purpose of the exhibition. In any case no illuminant other than electric light or limelight shall be used for such purpose.

6. *Electric light.*

(a.) Within the enclosure the insulating material of all electric cables including "leads" to lamps in the enclosure shall be covered with fire-resisting material.

(b.) There shall be no coils of slack electric cable within the enclosure. The "leads" to the apparatus shall be kept well apart both within and without the enclosure and so run that the course of each may be readily traced.

(c.) No current at a higher pressure than 110 volts shall be used within the enclosure.

(d.) The cables for the cinematograph apparatus shall be taken as a separate circuit from the source of supply, and there shall be efficient switches and fuses inserted at the point where the supply is taken, and in addition, an efficient double pole switch shall be fitted in the cinematograph lamp circuit inside the enclosure.

(e.) Resistance frames shall be constructed entirely of fire-resisting material, and they shall, if reasonably practicable,

be placed in a room apart from that used for the exhibition. If accessible to the public, they shall be protected by a wire guard or other efficient means. With the exception of a small resistance for regulating purposes, they shall be placed outside the enclosure.

7. *Limelight.*

(a.) If limelight be used in the lantern the gas cylinders shall be tested and filled in conformity with the requirements set out in the Appendix hereto. The tubing shall be of sufficient strength to resist pressure from without and shall be properly connected up. Ether and other inflammable liquids shall not be employed under any circumstances for producing light.

(b.) The gas in no case shall be stored in or used from bags or containers other than those constructed in accordance with the requirements contained in the Appendix.

8. All cinematograph projectors shall be fitted with two metal film boxes of substantial construction, and not more than twelve inches in diameter, inside measurement, to and from which the films shall travel. Such boxes shall be made to close in a manner which will prevent the ingress of fire, and shall be fitted with a film-slot so constructed as to prevent the passage of flame to the interior of the film box. Provided that, where only one film is used for the purpose of an exhibition, the film box may be not more than fourteen inches in diameter.

All films when not in the machine, and while still in the enclosure, shall be contained in closed metal boxes.

9. No smoking shall at any time be permitted within the enclosure.

10. No inflammable article unnecessary for the purposes of the exhibition shall be taken into or allowed to remain in the enclosure.

11. During an exhibition adequate fire appliances sufficient to deal promptly with a local outbreak of fire, including a bucket of dry sand, shall be kept available outside the enclosure and be in charge of a special attendant.

12. The general lighting of the auditorium and exits shall not be controlled solely from within the enclosure.

13. The management and the cinematograph operator shall take all due precautions for the prevention of accidents, and shall abstain from any act whatever which tends to cause fire and is not reasonably necessary for the purpose of the exhibition, and no unauthorised person shall be allowed in the enclosure.

14. In every case where a licence has been granted under

the Act in respect of a building or structure of a moveable (*sic*) character, a plan and description of the building or structure, certified with the approval of the licensing authority, shall be attached to the licence. Such a licence may provide that any of the conditions or restrictions contained therein may be modified either by the licensing authority or by the licensing authority of the district where an exhibition is about to be given. The licence and plan and description shall be produced on demand to any police constable or to any person authorised by the licensing authority or by the authority in whose district the building or structure is being or is about to be used for the purpose of any such exhibition.

15. In these regulations the word "building" shall be deemed to include any booth, tent, or similar structure.

Given under my hand at Whitehall, this 20th day of December, 1909.

H. J. GLADSTONE,
One of His Majesty's Principal
Secretaries of State.

APPENDIX.

LIMELIGHT.

The gas cylinders shall be tested and filled in conformity with the following requirements, which follow the recommendations of the Departmental Committee of the Home Office on the Manufacture of Compressed Gas Cylinders [Report 7952 of 1896]:—

Cylinders of Compressed Gas (Oxygen, Hydrogen, or Coal Gas).

(a) *Lap-welded wrought iron*.—Greatest working pressure, 120 atmospheres, or 1,800 lbs. per square inch.

Stress due to working pressure not to exceed $6\frac{1}{2}$ tons per square inch.

Proof pressure in hydraulic test, after annealing, 224 atmospheres, or 3,360 lbs. per square inch.

Permanent stretch in hydraulic test not to exceed 10 per cent. of the elastic stretch.

One cylinder in 50 to be subjected to a statical bending test, and to stand crushing nearly flat between two rounded knife-edges without cracking.

(b) *Lap-welded or seamless steel*.—Greatest working pressure, 120 atmospheres, or 1,800 lbs. per square inch.

Stress due to working pressure not to exceed $7\frac{1}{2}$ tons per square inch in lap-welded, or 8 tons per square inch in seamless cylinders.

Carbon in steel not to exceed 0.25 per cent. or iron to be less than 99 per cent.

Tenacity of steel not to be less than 26 or more than 33 tons per square inch. Ultimate elongation not less than 1.2 inches in 8 inches. Test-bar to be cut from finished annealed cylinder.

Proof pressure in hydraulic test, after annealing, 224 atmospheres, or 3,360 lbs. per square inch.

Permanent stretch shown by water jacket not to exceed 10 per cent. of elastic stretch.

One cylinder in 50 to be subjected to a statical bending test, and to stand crushing nearly flat between rounded knife-edges without cracking.

Regulations applicable to all Cylinders.

Cylinders to be marked with a rotation number, a manufacturer's or owner's mark, an annealing mark with date, a test mark with date. The marks to be permanent and easily visible.

Testing to be repeated at least every two years, and annealing at least every four years.

A record to be kept of all tests.

Cylinders which fail in testing to be destroyed or rendered useless.

Hydrogen and coal gas cylinders to have left-handed threads for attaching connections and to be painted red.

The compressing apparatus to have two pressure gauges, and an automatic arrangement for preventing overcharging. The compressing apparatus for oxygen to be wholly distinct and unconnected with the compressing apparatus for hydrogen and coal gas.

Cylinders not to be refilled till they have been emptied.

If cylinders are sent out unpacked the valve fittings should be protected by a steel cap.

A minimum weight to be fixed for each size of cylinder in accordance with its required thickness. Cylinders of less weight to be rejected.

FORMS OF INFORMATION AND SUMMONS.

(N.B.—SEE SKELETON FORMS, *ante*, pp. 982, 1092.)

Agents, Fraudulent Conversion by.—(i) “That *A. B.* of . . . being entrusted solely (or jointly with one *C. D.*) with certain property, to wit . . . in order that he might retain in safe custody (or apply for a certain purpose, to wit, for the purpose of . . . or deliver to a certain other person, to wit, one *E. F.*) the said property (or a certain part of the said property, to wit . . . or a certain part of the proceeds of the said property, to wit . . .) unlawfully and fraudulently did on the . . . day of . . . in . . . convert to his own use and benefit (or to the use and benefit of a certain other person, to wit, *G. H.*) the said property (or the said part of, *etc.*) contrary to the form of the statute in such case made and provided.”

(ii) “That *A. B.*, of . . . having received solely (or jointly with one *C. D.*) for (or on account of) a certain other person, to wit, *E. F.*, certain property, to wit . . . unlawfully [*as above from ‘and fraudulently’ to ‘said property’*] (or a certain part thereof to wit . . . or a certain part of the proceeds thereof, to wit . . .) contrary, *etc.*”

Assault.—(i) “Unlawfully assault and beat the said *C. D.* contrary to the form of the statute in such case made and provided.”

(ii) “Unlawfully assault and beat (or resist or wilfully obstruct) the said (or one) *C. D.*, he, the said *C. D.*, then being one of the constables of . . . and being then and there in the due execution of his duty as such constable contrary to the form of the statute in such case made and provided.”

Betting Houses, etc.—(i) *Keeping or using place for the purpose of betting*: “Being the owner of (or occupier of, or a person using) a certain house (or office, or room, or place, that is to say, a . . .) situate at . . . unlawfully open (keep, or use) the same for the purpose of betting with persons resorting thereto upon certain events and contingencies of and relating to certain horse-races (or as the case may be) contrary to the form of the statute in such case made and provided.”

(ii) *Owner or occupier permitting place to be kept or used for the purpose of betting*: “Being the owner (or occupier) of a certain house (or office, or room, or place, that is to say, a . . .) situate at . . . unlawfully, knowingly, and wilfully permit the same to be opened (kept or used) by certain other persons for the purpose of betting upon certain events and contingencies of and relating to horse-races (or as the case may be) contrary to the form of the statute in such case made and provided.”

(iii) *Manager, etc., assisting in keeping place for the purpose of betting*: "Unlawfully was a person having the care or management (or assisting in conducting the business) of a certain house (or office, or room or place, that is to say, a) situate at then and there opened (kept or used) for the purpose of persons betting therein upon certain events and contingencies of and relating to horse-races (or as the case may be) contrary to the form of the statute in such case made and provided."

Bicycle.—(i) *Omission to give warning*: "That A. B., of on the day of in then being a person riding upon a certain carriage, to wit, a bicycle, on a certain carriage way there situate, known as and overtaking a certain foot-passenger (or cart or carriage or horse or mule or other beast of burden as the case may require) being on (or proceeding along) such carriage way, unlawfully did not when within a reasonable distance from and before passing such foot-passenger (or cart, etc.) by sounding a bell or whistle or otherwise give audible and sufficient warning of the approach of such bicycle contrary to the form of the statute in such case made and provided."

(ii) *Failure to exhibit light*: "That A. B., of, etc., etc., during the period between one hour after sunset and one hour before sunrise then being a person riding upon a certain carriage, to wit, a bicycle, on a certain highway there situate, known as unlawfully did not carry attached to the said carriage a lamp so constructed and placed as to exhibit a light in the direction in which he was then proceeding and so lighted and kept lighted as to afford adequate means of signalling the approach and position of the said carriage contrary to the form of the statute in such case made and provided."

Children.—(i) *Cruelty to children*: "That A. B., of being a person over the age of sixteen years and having the custody (^{and} _{or} charge ^{and} _{or} care) of certain children under the age of fourteen years (^{and} _{or} young persons under the age of sixteen years), to wit, ..., ..., of the ages of, ..., ... years respectively, did on divers dates between the day of last and the day of last and on divers former days in aforesaid unlawfully and wilfully assault (^{and} _{or} ill-treat ^{and} _{or} neglect ^{and} _{or} abandon ^{and} _{or} expose) the said children (^{and} _{or} young persons) in a manner likely to cause them unnecessary suffering (^{and} _{or} injury to their health) contrary to the form of the statute in such case made and provided."

(ii) *Child begging*: "That on the day of in A. B. did cause (or procure) [^{or} That A. B., then being a person having the custody (^{and} _{or} charge ^{and} _{or} care) of such child (or young person) did allow] a certain child under the age of fourteen years (or young person between the ages of fourteen and sixteen years), to wit of the age of years to be in a certain street (or premises or place) situate in aforesaid and known as for the purpose of begging (or receiving alms or inducing the giving

of alms) contrary to the form of the statute in such case made and provided."

(iii) *Exposing child to risk of burning*: "That A. B. of being a person over the age of sixteen years and having the custody (*and* ^{*and*} charge ^{*and*} *or* care) of a certain child under the age of seven years, to wit of the age of years, did on the day of in aforesaid unlawfully allow the said child to be in a certain room in certain premises situate in street in aforesaid, the said room then containing an open fire-grate not sufficiently protected to guard against the risk of the said child being burnt or scalded and without taking reasonable precautions against that risk by reason whereof the said child was killed (*or* suffered serious injury, that is to say, was seriously burnt *or as the case may be*), contrary to the form of the statute in such case made and provided."

(iv) *Child in "bar" of licensed premises*: (a) "That on the day of in A. B., then being the holder of the licence of certain premises licensed for the sale of intoxicating liquors by retail situate in street in aforesaid and known by the sign of unlawfully did allow a certain child under the age of fourteen years, to wit a child of the age of years, to be in the bar of the said licensed premises during the hours when the said premises were not directed to be closed for the sale of intoxicating liquors, to wit, at the hour of o'clock in the forenoon (*or as the case may be*), contrary to the form of the statute in such case made and provided."
(β) "That on the day of in C. D. did unlawfully cause (*or* procure) a certain child under the age of fourteen years, to wit a child of the age of years, to go (*or be*) in the bar of certain premises licensed for the sale of intoxicating liquors by retail situate in street in aforesaid and known by the sign of during the hours when the said premises were not directed to be closed for the sale of intoxicating liquors, to wit, at the hour of o'clock in the forenoon (*or as the case may be*), contrary to the form of the statute in such case made and provided."

Cruelty to Animals.—"Unlawfully and cruelly illtreat [*or* torture] a certain animal, to wit, a by [*working* the same when in an unfit state *or as the case may be*] contrary to the form of the statute in such case made and provided"; *or*, "unlawfully cause a certain animal, to wit, a to be cruelly illtreated [*or* tortured] by contrary to the form of the statute in such case made and provided."

Damage to Property to Amount not exceeding £5.—"Unlawfully and wilfully (*or* maliciously) commit damage (not exceeding in amount the sum of five pounds, to wit, to the amount of shillings), to the property of by contrary to the form of the statute in such case made and provided."

Desertion of Family.—"Unlawfully run away from the said township whereby [his wife ^{and} _{or} child *as the case may be*] became [and still are *or is*] actually chargeable to the common fund of the [said] union contrary to the form of the statute in such case made and provided."

Dogs.—(i) *Dog without collar*: "That A. B., of on the day of in was then the owner (*or the person for the time being in charge*) of a certain dog then found in a certain highway there situate, called (*or in a certain place of public resort there situate, known as*) [*OR That A. B., of on the day of in did unlawfully allow a certain dog then to be in a certain highway, etc.*], the said dog not then and there wearing a collar with the name and address of the owner inscribed on the collar or on a plate or badge attached thereto in accordance with the Regulations duly made by the Council of being the Local Authority having jurisdiction in aforesaid in pursuance of the Dogs Order of 1906 and the Diseases of Animals Act, 1894, and other statutes in that behalf contrary to the said Regulations."

(ii) *Dangerous dog not kept under proper control*: "That A. B., of on the day of in was then and now is the owner of a certain dangerous dog which was not then and there and is not now kept under proper control contrary to the form of the statute in such case made and provided."

Drunkenness.—(i) *Found drunk in highway, licensed premises, etc.*: "[was] found unlawfully drunk in a certain highway there situate, known as (*or in a certain public place there situate, to wit or on certain premises there situate, licensed for the sale of intoxicating liquors by retail, and known by the sign of the*) contrary to the form of the statute in such case made and provided."

(ii) *Drunk and disorderly*: "[was] drunk in a certain highway there situate, known as (*or in a certain public place there situate, to wit*) and was unlawfully guilty while drunk of disorderly behaviour contrary, etc."

(iii) *Drunk in charge of carriage, etc.*: "[was] unlawfully drunk while in charge of a carriage (*or horse, etc.*) on a certain highway situate in known as (*or in a certain public place situate in to wit*) contrary, etc."

(iv) *Drunk while in charge of a child*: "[was] found unlawfully drunk in a certain highway there situate known as (*or in a certain public place there situate, to wit or on certain premises there situate, licensed for the sale of intoxicating liquors by retail, and known by the sign of the*) while having the charge of a child under the age of seven years, to wit, of the age of years, contrary, etc."

Embezzlement by Clerk or Servant.—"Then being the servant (*or clerk or employed in the capacity of a servant or clerk*) of

did receive and take into his possession for and on account of his said master divers sums of money amounting in the whole to the sum of pounds shillings and pence and did afterwards in the said feloniously and fraudulently embezzle the same contrary to the form of the statute in such case made and provided."

Food, Sale of Adulterated.—(i) "(By the hands of his servant or agent) did unlawfully sell to the prejudice of the said (the purchaser) a certain article of food, to wit which was adulterated with and was not of the nature, substance and quality demanded by the purchaser, contrary to the provisions of section 6 of the 'Food and Drugs Act, 1875.' The prosecutor is named"

(ii) *Sample of milk taken in course of delivery*: "The information and complaint of *A. B.*, inspector of markets for the (or duly authorised police constable of the or as the case may be), who states that on the day of in the said the said *A. B.*, then being an inspector of markets in the (or as the case may be), did procure at the place of delivery, to wit, at in the said a sample of milk then in course of delivery to one *C. D.*, the consignee, in pursuance of a contract for the sale of such milk, the said milk having been consigned by *E. F.*, of and the said *A. B.* suspecting the said milk to have been sold contrary to provisions of section 6 of the 'Food and Drugs Act, 1875,' submitted it to be analyzed, and thereupon the said milk was found not to be of the nature, substance, and quality of the article demanded by the purchaser thereof in that it contrary to the form of the statute in such case made and provided. The prosecutor is named"

Gambling on Highway, etc.—"In a certain highway there situate, known as (or in a certain open place there situate, known as to which the public then were permitted to have access) did unlawfully play by way of gaming [with certain coins] at a game of chance called contrary to the form of the statute in such case made and provided."

Highway.—(i) *Obstructing highway, etc.*: "unlawfully and wilfully obstruct the passage of a certain public highway [or footway] situate in known as by thereon contrary to the form of the statute in such case made and provided."

(ii) *Obstructing street (Town Police Clauses Act)*: "in a street called in the said did by means of a certain unlawfully and wilfully cause an obstruction in the public thoroughfare there situate to the obstruction of the passengers then being thereon contrary to the form of the statute in such case made and provided."

(iii) *Riding, etc., on footway*: "unlawfully and wilfully ride (or lead or drive a horse or carriage, etc.) upon a certain footpath by the

side of a certain highway situate in known as set apart for the use of foot passengers contrary to the form, etc.”

Larceny, etc.—(i) *Simple Larceny*: “Did feloniously steal, take and carry away the property of contrary to the form of the statute in such case made and provided.”

(ii) *Stealing trees, etc., in garden, etc., where value is 1s. but not more than 20s.*: “Unlawfully did steal a certain shrub (or sapling, or a part of a certain tree, that is to say branches thereof) of the value of one shilling at the least and not exceeding one pound that is to say of the value of shillings, the property of then growing in a certain garden (or park, orchard, etc.) situate at in the occupation of contrary to the form of the statute in such case made and provided.”

(iii) *Cutting, etc., with intent to steal trees, etc., in garden, etc., where, damage is 1s. but not more than 20s.*: “Unlawfully did cut (or destroy or damage) with intent to steal a certain shrub (or sapling or a part of a certain tree that is to say branches thereof) the property of then growing in a certain garden (or park, orchard, etc.) situate at in the occupation of and thereby causing injury to the said to the amount of one shilling at the least and not exceeding one pound, that is to say to the amount of shillings, contrary to the form of the statute in such case made and provided.”

Licensed Person Permitting Drunkenness, etc.—“Then being a person licensed for the sale of intoxicating liquors by retail in his house and premises situate at did unlawfully permit drunkenness (or violent, quarrelsome, or riotous conduct) to take place in his said licensed premises contrary to the form of the statute in such case made and provided.”

Licensed Person Selling to a Child.—“Then being a licensed person within the intent and meaning of the Licensing Acts, 1828 to 1904, did unlawfully and knowingly sell or deliver (or allow one *C. D.*, to sell or deliver) certain intoxicating liquor, to wit, ... to a child under the age of fourteen years, to wit, one aged years, the said intoxicating liquor not being in a quantity not less than one reputed pint sold (or delivered) in a corked and sealed vessel for consumption off the premises only contrary to the form of the statute in such case made and provided.”

Lights on Vehicles Act, 1907.—(i) “On the day of in the year aforesaid in the said during the period between one hour after sunset and one hour before sunrise, to wit, at did unlawfully cause (or permit) a certain vehicle to which the Lights on Vehicles Act, 1907, applies, to wit, a to be in a certain street (or highway or road) there situate, known as to which said street (or highway or road) the public then had access, and did at the time and in the place aforesaid unlawfully fail and neglect to provide such vehicle with a lamp or lamps in proper working order and so constructed and

capable of being so attached as when lighted to display to the front a white light visible for a reasonable distance, whereby the said vehicle was at the time aforesaid in the said street (*or highway or road*) without having any such lamp or lamps attached thereto contrary to the form of the statute in such case made and provided."

(ii) "Then being a person driving (*or in charge of*) a certain vehicle to which the Lights on Vehicles Act, 1907, applies, to wit, a in a street (*or highway or road*) there situate, known as to which the public then had access, unlawfully did not during the period between one hour after sunset and one hour before sunrise, to wit, at keep lamps properly trimmed, lighted, and attached to the said vehicle or a lamp properly trimmed, lighted, and attached to the said vehicle on the off or right side thereof so as to display to the front a white light visible for a reasonable distance contrary to the form of the statute in such case made and provided."

Margarine.—(i) *Exposing for sale without label*: "Then being a person dealing in margarine unlawfully did expose for sale by retail a certain parcel of margarine there not being attached to the parcel so exposed as aforesaid in such manner as to be clearly visible to the purchaser a label marked in printed capital letters not less than one and a half inches square "Margarine" contrary to the form of the statute in such case made and provided."

(ii) *Sale without marked wrapper*: "Then being a person dealing in margarine unlawfully did sell by retail a certain quantity of margarine, to wit, ... weight thereof such margarine not being in a package durably branded or marked "Margarine" on the top, bottom, and sides in printed capital letters and the same not being delivered to the purchaser in a paper wrapper on which the word "Margarine" was printed without other printed matter in capital block letters not less than half an inch long and distinctly legible contrary to the form of the statute in such case made and provided."

Motor Cars.—(i) *Driving recklessly, dangerously, etc.*: "That A. B., of on the day of in then being the driver of a certain motor car (*or motor cycle*), No. on a certain public highway (*or roadway* to which the public are and then were granted access) there situate, known as unlawfully did drive the said motor car (*or motor cycle*) recklessly (*or negligently*) [or at a speed (*or in a manner*) which was dangerous to the public having regard to all the circumstances of the case including the nature, condition, and use of the said highway (*or roadway*) and to the amount of traffic which at the time was (*or might reasonably have been expected to be*) thereon] contrary to the form of the statute in such case made and provided."

(ii) *Exceeding speed limit*: "That A. B., of on the day of in then being the driver of a certain motor car (*or motor cycle*), No. on a certain public highway (*or roadway* to which the public are and then were granted access) there situate known as unlawfully did drive the said motor car

(*or motor cycle*) at a speed exceeding [twenty] miles per hour in contravention of [section 9 (i) of the Motor Car Act, 1903, *or as the case may be*] and that warning of this intended prosecution was given to the said *A. B.* at the time the offence was committed (*or that notice of this intended prosecution was sent to the said A. B., etc., as the case may be*) contrary to the form of the statute in such case made and provided."

(iii) *Non-illumination of back identification plate*: "That *A. B.*, of, etc., etc., then being a person using a certain motor car, No. . . . on a certain public highway there situate, known as . . . during the period between one hour after sunset and one hour before sunrise, to wit, at . . . unlawfully did not keep a lamp burning on the said motor car so contrived as to illuminate by means of reflection, transparency, or otherwise and render easily distinguishable every letter and figure on the identification plate fixed on the back of the said motor car as required by Article 11 of the Motor Car (Registration and Licensing) Order, 1903, and contrary to the statutes in such case made and provided."

(iv) *Failure to exhibit proper lights*: That *A. B.*, of, etc., etc., then being a person in charge of a certain motor-car, No. . . . on a certain public highway (*or roadway to which the public are and then were granted access*) there situate, etc. . . . during the period, etc. . . . unlawfully did not carry attached to the said motor car a lamp so constructed and placed as to exhibit a white light visible within a reasonable distance in the direction towards which the said motor car was then proceeding (*or was intended to proceed*) [*and, if it be the case, add*: nor a red light visible within a reasonable distance in the direction reverse to that in which the said motor car was then proceeding (*or was intended to proceed*)] as required by the Regulations of the Local Government Board contained in Article 2 of the Motor Cars (Use and Construction) Order, 1904, and contrary to the form of the statutes, etc."

(v) *Driving without licence*: "That *A. B.*, of, etc., etc., in . . . unlawfully did on the . . . day of . . . on a certain public highway (*or roadway to which the public are and then were granted access*) there situate, known as . . . drive a certain motor car, he, the said *A. B.*, not then being duly licensed for the purpose as required by the Motor Car Act, 1903, contrary to the form of the statute in such case made and provided.

Musical Copyright.—*Forfeiture of pirated copies seized at written request of owner of copyright*: "Did offer for sale (*or hawk, carry about, or sell, as the case may be*) a pirated copy of a musical work, to wit, one . . . such copy being an infringement of copyright, and that such copy was seized by a constable without warrant on the request in writing of the apparent owner of the copyright in such work (*or of the agent of the apparent owner, etc., thereto authorised in writing*), and that such copy was conveyed by such constable before the court of summary jurisdiction sitting at . . . and that such copy is liable to be forfeited or destroyed, or

otherwise dealt with as the court may think fit. You are therefore hereby summoned to appear before the court of summary jurisdiction sitting at . . . to answer to the said information and to shew cause why such copy should not be forfeited, destroyed, or otherwise dealt with as the court may think fit."

Neglect of Family.—Then being a person able wholly (or in part) to maintain [his] family by work or other means, did unlawfully and wilfully refuse and neglect so to do, by which refusal and neglect [his wife and children] whom he was then bound to maintain [have] become [and still are] chargeable to the common fund of the said union contrary to the statute in such case made and provided."

Obtaining Money, etc., by False Pretences.—"Unlawfully and knowingly by certain false pretences did obtain of and from . . . the sum of . . . pounds . . . shillings and . . . pence (or certain goods that is to say . . .) the moneys (or goods and chattels) of . . . with intent thereby then and there to defraud contrary to the form of the statute in such case made and provided."

Railways.—(i) *Travelling without payment of fare*: "Unlawfully travel (or attempt to travel) on the . . . railway there situate without having previously paid his fare and with intent to avoid payment thereof contrary to the form of the statute in such case made and provided."

(ii) *Proceeding beyond distance for which fare was paid*: "Having paid his fare on the . . . railway there situate for a certain distance, to wit, from the station at . . . to the station at . . . did unlawfully, knowingly, and wilfully proceed beyond that distance, to wit, to . . . without previously paying the additional fare for such added distance and with intent to avoid payment thereof contrary to the form, etc."

(iii) *Giving false name or address*: "Having failed to pay the fare (chargeable for travelling on the railway of the . . . railway company) unlawfully did give in reply to a request by one . . . then being an officer (or servant) of the said railway company a false name (^{and} or a false address as the case may be) contrary to the form, etc."

(iv) *Obstructing officials*: "Unlawfully and wilfully obstruct (or impede) one . . . an officer (or agent) of the . . . railway company in the execution of his duty by [here describe the nature of the obstruction or impediment], the said . . . then being in the due execution of his duty as such officer (or agent) as aforesaid upon the railway (or at the station or on the works) of the said railway company situate at . . . contrary to the form, etc."

(v) *Wilful trespass on railway*: "Unlawfully and wilfully trespass upon the railway (or at the station or on the works) of the . . .

railway company situate at and did unlawfully refuse to quit the same upon and after a request made to him for that purpose by one an officer (*or agent*) of the said railway company contrary to the form, *etc.*”

(vi) *Being or passing on railway after notice*: “Unlawfully was (*or did pass*) upon a certain railway, to wit, the line of the railway company situate at not being (*or passing*) thereon for the purpose of crossing the same at an authorised crossing, and after having once received warning from the said company (*or from one* then being the servant of the said company and authorised by them to act in that behalf) not to go (*or pass*) thereon contrary to the form, *etc.*”

Street Betting.—“Did unlawfully frequent (*or loiter in*) a certain street, to wit, a certain road (*or court, etc.*) [*or a certain public place, to wit, a certain public park (or public garden, etc.)*] situate in known as for the purpose of bookmaking (*or betting*), wagering, agreeing to bet, agreeing to wager, paying bets, receiving bets, or settling bets, *as the case may be*) contrary to the form of the statute in such case made and provided.” Cf. *ante*, p. 327.

Sureties of the Peace.—“Threaten (*A.B.* the complainant) in the words or to the effect following, that is to say:— and that from the threats used by towards the said complainant [*he*] is afraid that will do [*him*] some bodily injury, and therefore prays that may be required to find sufficient sureties to keep the peace and be of good behaviour towards [*him*] and that without malice or ill-will but for the preservation of [*his*] person from injury.”

Vaccination, Neglect of.—“Being the father (*or mother*) [*or a person then having the custody*] of a child named born in England, did at contrary to the provisions of the Vaccination Acts, 1867 to 1907, unlawfully neglect to cause the said child to be vaccinated within six calendar months after his (*or her*) birth, as required by the said Acts, he (*or she*) the said not having any reasonable excuse for such neglect as aforesaid.”

Weights and Measures.—(i) *Use or possession of unjust weights, etc.*: “Unlawfully used (*or had in his possession for use*) for trade a certain weight (*or measure or scale, etc., as the case may be*) which was false (*or unjust*) contrary to the form of the statute in such case made and provided.”

(ii) *Fraud in using weights*: “Unlawfully and wilfully did commit (*or was wilfully party to the commission of*) a fraud in using a certain weight (*or measure, or scale, etc., as the case may be*) by (*stating the nature of the fraud*) contrary to the form of the statute in such case made and provided.”

(iii) *Delivering coal without ticket*: “Then being the seller of a certain quantity of coal exceeding two hundredweight, which said

Weights and
measures
—*contd.*

coal was delivered to the purchaser, one *C. D.*, by means of a certain vehicle, to wit, a . . . unlawfully did not before any part of the said coal was unloaded deliver therewith to *C. D.*, the said purchaser or to his servant, or cause to be delivered or to be sent by post or otherwise to the said *C. D.* or to his servant any ticket or note according to the form in the Third Schedule of the Weights and Measures Act, 1889, or according to any form to the same or a like effect, contrary to the form of the statute in such case made and provided."

(iv) *Delivering less coal than is expressed in ticket: As in (iii) to "unlawfully," then* "Did deliver a quantity of coal, to wit, coal of the weight of . . . which was less than the quantity of coal expressed in the ticket (*or* note) which was delivered (*or* sent) to the said *C. D.* (*or* one *E. F.*, the servant of the said *C. D.*) as required by section 21 (i) of the Weights and Measures Act, 1889, to wit, coal of the weight of . . . contrary to the form of the statute in such case made and provided."

(v) *Delivering, etc., less coal than is represented, when coal has been weighed in course of delivery:* "That on the . . . day of . . . in . . . certain quantities of coal contained in bags (*or as the case may be*) in course of delivery to a purchaser were weighed by an officer duly appointed for the purpose by a certain local authority, to wit the . . . and were found to be of less weight than that represented by the seller, that is to say . . . bags each represented to contain . . . lbs. contained respectively in weight of coal . . . lbs., . . . lbs., . . . lbs., and . . . lbs., whereby *A. B.* of . . . being the person selling (*or* keeping *or* exposing for sale) the coal [*OR* being the person in charge of a vehicle carrying the coal for delivery to a purchaser] became and is liable to the penalty provided and prescribed by the Weights and Measures Act, 1889."

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